

CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

**Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
U.S. Customs Service**

**U.S. Court of Appeals for the Federal Circuit
and**

U.S. Court of International Trade

VOL. 35

DECEMBER 12, 2001

NO. 50

This issue contains:

U.S. Customs Service

T.D. 01-85 **PUBLIC VERSION**

General Notices

U.S. Court of International Trade

Slip Op. 01-127

Slip Op. 01-135 Through 01-137

Abstracted Decisions:

Classification: C01/134

NOTICE

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U.S. Customs Service

Treasury Decision

(T.D. 01-85)

SYNOPSIS OF DRAWBACK RULINGS

The following are synopses of drawback rulings approved May 1, 2001, to June 18, 2001, inclusive, pursuant to Subparts A & B, Part 191 of the Customs Regulations.

In the synopses below are listed for each drawback ruling approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the date the application was signed, the Port Director to whom the ruling was forwarded to or approved by, the date on which it was approved and the ruling number.

Dated: November 26, 2001.

WILLIAM G. ROSOFF
(for John Durant, Director,
Commercial Rulings Division.)

(A) Company: Alltrista Zinc Products, L.P.
Articles: solid zinc strip; zinc alloy strip
Merchandise: special high grade zinc ingots
Application signed: November 28, 2000
Ruling Forwarded to PD of Customs: New York, June 15, 2001
Effect on other rulings: none
Ruling: 44-06122-000

(B) Company: BacPlas, Inc.
Articles: bottle preforms
Merchandise: polyethylene terephthalate copolymer resin (PET resin)
Application signed: November 23, 1999
Ruling Forwarded to PD of Customs: Miami, May 3, 2001
Effect on other rulings: none
Ruling: 44-06103-000

(C) Company: Conoco, Inc.

Articles: petroleum & petrochemical products

Merchandise: crude petroleum & petroleum derivatives

Application signed: May 3, 2001

Ruling Forwarded to PDs of Customs: Houston, San Francisco & Chicago July 2, 2001

Effect on other rulings: terminates T.D. 67-14(1) as amended by T.D. 71-44(3) & 71-201(1)(44-04318-000)

Ruling: 44-04318-001

(D) Company: Continental General Tire, Inc.

Articles: polyester yarn

Merchandise: tire fabric & tires

Application signed: November 7, 2000

Ruling Forwarded to PD of Customs: New York, May 16, 2001

Effect on other rulings: none

Ruling: 44-06095-000

(E) Company: CREANOVA, Inc.

Articles: DAMO tech-N(2-aminoethyl-3-amino propyl) trimethoxysilane; VTEO—vinyltriethoxysilane; PSX872—diisopropyl dimethoxy silane; MTMO-E-3-mercaptopropyl trimethoxysilane; VTMOE—vinyltris (2-methoxyethoxy) silane; PSX5301—dicylopentyl dimethoxy silane; MTMO—3-mercaptopropyl trimethoxysilane; VTMO—vinyltrimethoxysilane; HMDS—hexamethylsilazane

Merchandise: Dynasylan@CPTMO; Dynasil@M; trimethylchlorosilane (TMCS); vinyltrichlorosilane

Application signed: September 8, 2000

Ruling Forwarded to PD of Customs: New York, May 11, 2001

Effect on other rulings: none

Ruling: 44-06110-000

(F) Company: CREANOVA, Inc.

Articles: colorants

Merchandise: pigments (sicotrans red 2817; sicotrans red L 2917; chromofine blue 5085N; heliogen blue L-6875-F; heliogen green L8690

Application signed: December 29, 2000

Ruling Forwarded to PD of Customs: New York, May 18, 2001

Effect on other rulings: none

Ruling: 44-06112-000

(G) Company: Crompton Corporation

Articles: not modified

Merchandise: not modified

Supplemental application signed: August 7, 2000

Modification approved by PD of Customs in accordance with §191.8(g)(2): Boston, May 9, 2001

Effect on other rulings: (1) OSi Specialties, Inc. T.D. 97-12-U (44-04544-000) succeeded by OSi Specialties Holding Company; (2) further succeeded by Witco Corporation; (3) further succeeded by CK Witco Corporation under 19 U.S.C. 1313(s); (4) change in corporate name

Ruling: 44-04544-001

(H) Company: Crompton Corporation

Articles: not modified

Merchandise: not modified

Supplemental application signed: August 7, 2000

Modification approved by PD of Customs in accordance with §191.8(g)(2): Boston, May 9, 2001

Effect on other rulings: (1) OSi Specialties T.D. 97-12-U (44-05017-000) succeeded by OSi Specialties Holding Company; (2) further succeeded by Witco Corporation; (3) further succeeded by CK Witco Corporation under 19 U.S.C. 1313(s); (4) change in corporate name

Ruling: 44-05017-001

(I) Company: Danisco Cultor America, Inc.

Articles: xylitol

Merchandise: d-xylose crystalline

Application signed: May 8, 2000

Ruling Forwarded to PD of Customs: Chicago, July 2, 2001

Effect on other rulings: none

Ruling: 44-06129-000

(J) Company: Dow AgroSciences, LLC (successor to DowElanco, LLC, under 19 U.S.C. 1313(s))

Articles: chlorpyrifos (a.k.a. "Dursban")

Merchandise: 0,0-diethyl phosphorochloridothioate (DEPCT)

Application signed: June 28, 2000

Ruling Forwarded to PDs of Customs: San Francisco, Boston & Houston June 8, 2001

Effect on other rulings: none

Ruling: 44-06116-000

(K) Company: DuPont Powder Coatings U.S.A., Inc.

Articles: FBE pipe powder coatings

Merchandise: epoxy resins (KD-214 CR; KD-214 CX; EPON 2024)

Application signed: September 27, 2000

Ruling Forwarded to PD of Customs: New York, May 16, 2001

Effect on other rulings: none

Ruling: 44-06111-000

(L) Company: Fortitech, Inc.

Articles: wedgewood nucleotide premix with choline bitrtrate;
nucleotide premix X0150; nucleotide premix 58796

Merchandise: adenosine-5 monophosphate; cytidine-5 monophosphate;
disodium guanosine-5 monophosphate; disodium inosine-5
monophosphate; disodium uridine-5 monophosphate

Ruling Forwarded to PD of Customs: New York, July 13, 2001

Effect on other rulings: none

Ruling: 44-06136-000

(M) Company: General Electric Co.

Articles: GTX® resins

Merchandise: nylon 6,6

Application signed: December 19, 2000

Ruling Forwarded to PD of Customs: New York, June 18, 2001

Effect on other rulings: none

Ruling: 44-06124-000

(N) Company: The Gillette Company, Duracell Division

Articles: dry cell alkaline batteries

Merchandise: PA36A; PA36AC; PA60A; PA25M; PA25MC (nonwoven
separators)

Application signed: August 2, 2000

Ruling Forwarded to PD of Customs: New York, May 4, 2001

Effect on other rulings: successor to Duracell, Inc. T.D. 97-54-I
(44-05105-000) under 19 U.S.C. 1313(s)

Ruling: 44-05105-001

(O) Company: The Gillette Company, Duracell division

Articles: dry cell alkaline batteries in various sizes

Merchandise: Duralam D236A; D236M; D236C/MC; DT225MC;
D260A; D260M laminated separator

Application signed: April 5, 2001

Ruling Forwarded to PD of Customs: New York, May 9, 2001

Effect on other rulings: successor to Duracell Inc., T.D. 95-6-I
(44-04607-000) under 19 U.S.C. 1313(s)

Ruling: 44-04067-001

(P) Company: H. J. Heinz Company

Articles: canned & processed foods

Merchandise: tomato paste

Application signed: September 13, 2000

Ruling Forwarded to PD of Customs: San Francisco, May 22, 2001

Effect on other rulings: none

Ruling: 44-06086-000

(Q) Company: Monsanto Company

Articles: herbicides MON37503 (a.k.a. Monitor, Leader, Apyros, Anthem, Sundance, and Monza) and MON37504

Merchandise: MON37500 (a.k.a. TKM-19) (1-(2-ethylsulfonylimid-azo[1,2-a]pyridin-3-ylsulfonyl) -3- (4,6-dimethoxypyrimidin-2-yl) urea)

Application signed: June 18, 2000

Ruling Forwarded to PD of Customs: Chicago, July 2, 2001

Effect on other rulings: none

Ruling: 44-06130-000

(R) Company: Monsanto Company

Articles: glyphosate intermediate-N-phosphonomethyliminodiacetic acid (a.k.a. PIA)

Merchandise: diethanolamine (DEA)

Application signed: December 19, 2000

Ruling forwarded to PD of Customs: Chicago, July 13, 2001

Effect on other rulings: none

Ruling: 44-06139-000

(S) Company: Precision Custom Coatings LLC

Articles: interliner

Merchandise: vestamelt 732; vestamelt 750 P2

Application Signed: August 18, 2000

Ruling forwarded to PD of Customs: New York, July 9, 2001

Effect on other rulings: successor to Precision Custom Coatings, Inc., T.D. 93-62-U (44-03332-000) under 19 U.S.C. 1313(s)

Ruling: 44-03332-001

(T) Company: Precision Custom Coatings, LLC

Articles: interliner

Merchandise: lantor 501300; lantor 501301; lantor 501401; PC63; PC64

Application signed: August 18, 2000

Ruling Forwarded to PD of Customs: New York, July 9, 2001

Effect on other rulings: successor to Precision Custom Coatings, Inc.

T.D. 96-37-O (44-04584-000) under 19 U.S.C. 1313(s)

Ruling: 44-04584-001

(U) Company: RMI Titanium Company

Articles: titanium milled products

Merchandise: titanium sponge, ingot, billet, bar, plate and sheet

Application signed: July 17, 2000

Ruling forwarded to PDs of Customs: San Francisco, Boston & Houston
June 8, 2001

Effect on other rulings: none

Ruling: 44-06115-000

(V) Company: Rubicon Inc. (Joint Venture)

Articles: Methylene diphenyl diisocyanate (MDI)

Merchandise: aniline

Application signed: August 3, 2000

Ruling forwarded to PD of Customs: New York, May 1, 2001

Effect on other rulings: Terminates T.D. 97-92-X (44-05247-000)

Ruling: 44-05247-001

(W) Company: Rubicon Inc. (Joint Venture)

Articles: methylene diphenyl diisocyanate (MDI)

Merchandise: nitrobenzene

Application signed: August 3, 2000

Ruling forwarded to PD of Customs: New York, May 2, 2001

Effect on other rulings: Terminates T.D. 99-39-W (44-05605-000)

Ruling: 44-05605-001

(X) Company: Santa Fe Natural Tobacco Company

Articles: cigarettes; manufactured cigarette tobacco-blended; manufactured cigarette tobacco-blended, cased, and cut a.k.a. cut filter tobacco

Merchandise: leaf tobacco; strip tobacco, and scrap/refuse tobacco

Application signed: July 2, 2001

Ruling forwarded to PDs of Customs: Miami, San Francisco & New York
July 17, 2001

Effect on other rulings: none

Ruling: 44-06141-000

(Y) Company: Specialty Chemical Systems, Inc. d/b/a Hectrio

Articles: stannous methane sulfonate; lead methane sulfonate

Merchandise: methane sulfonic acid

Application signed: November 7, 2000

Ruling Forwarded to PDs of Customs: New York, June 15, 2001

Effect on other rulings: none

Ruling: 44-06118-000

(Z) Company: Union Carbide Corporation

Articles: ethylene oxide

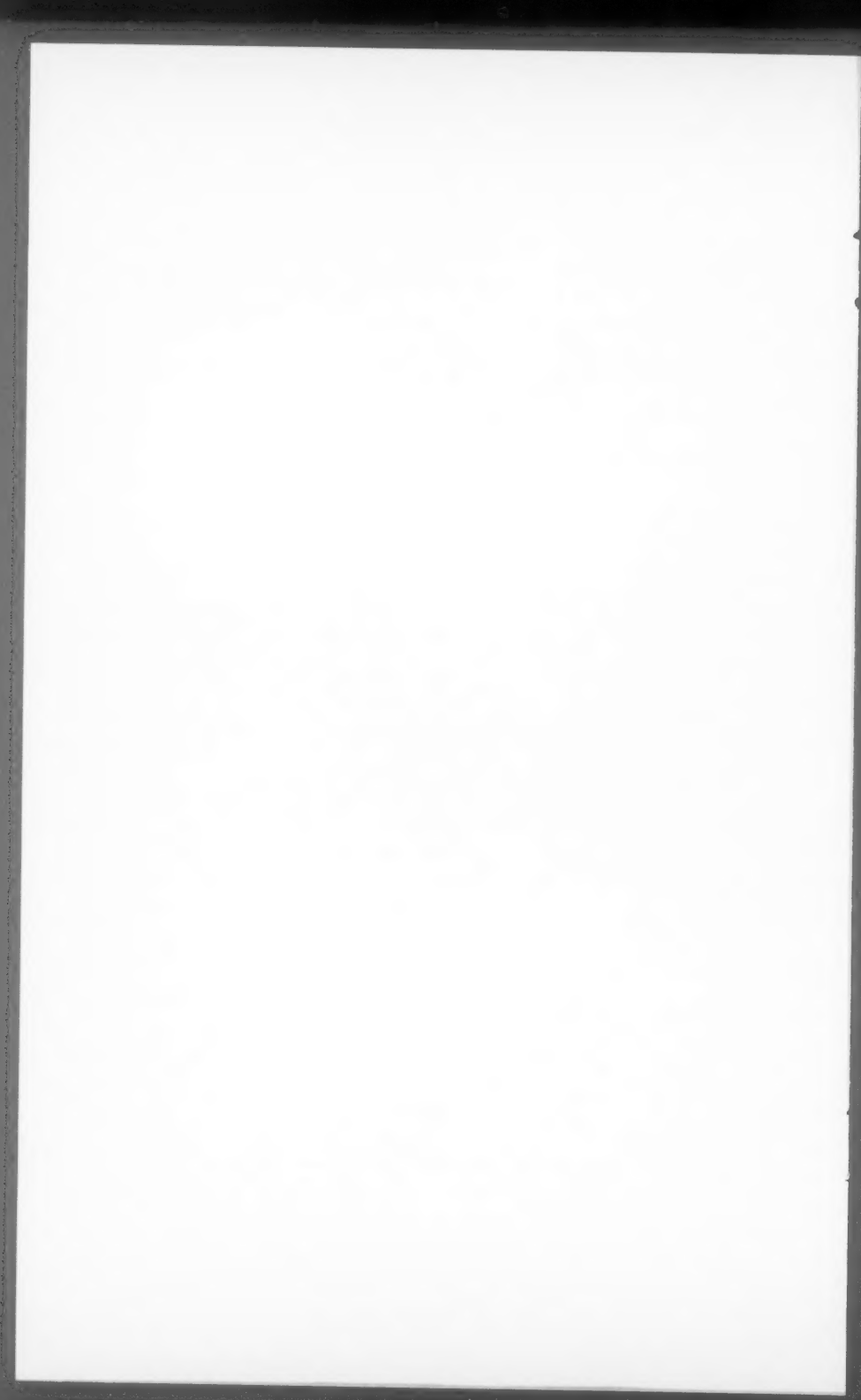
Merchandise: ethylene

Application signed: May 17, 2001

Ruling Forwarded to PDs of Customs: Houston & San Francisco July 2,
2001

Effect on other rulings: none

Ruling: 44-06128-000



U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, November 28, 2001.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

JOHN DURANT,
*(for Douglas M. Browning, Acting Assistant Commissioner,
Office of Regulations and Rulings.)*

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN TIME DELAY RELAY MODULES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the tariff classification of certain time delay relay modules under the Harmonized Tariff Schedule of the United States ("HTSUS").

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of certain time delay relay modules. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before January 11, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings. Attention: Regulations

Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NY) F89832, dated August 15, 2000, which pertains to the tariff classification of certain time delay relay modules. NY F89832 is set forth as "Attachment A" to this document.

Although in this notice Customs is specifically referring to one ruling, NY F89832, this notice covers any rulings on similar merchandise that may exist but has not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced rulings (see above), should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Cus-

toms previous interpretation of the HTSUS or other relevant statutes. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY F89832, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 964754 (see "Attachment B" to this document).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 21, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

New York, NY, August 15, 2000.

CLA-2-85:RR:NC:1:112 F89832

Category: Classification

Tariff No. 8536.49.0080

MS. BLYTHE SEVERSON
HONEYWELL, INC.
TRANSPORTATION AND CUSTOMS
1985 Douglas Drive N
Golden Valley, MN 55422-3992

Re: The tariff classification of a relay module from Mexico.

DEAR MS. SEVERSON:

In your letter dated July 17, 2000 you requested a tariff classification ruling.

As indicated by the submitted descriptive literature, the relay, identified as the ST82U family, is described as operating on a time delay principle. It contains a time delay circuit that enables the relay to function at a specified time period.

The applicable subheading for the ST82U time delay relays will be 8536.49.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for other relays. The general rate of duty will be 2.7 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212-637-7049.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:GC 964754 AML
Category: Classification
Tariff No. 8536.41.00

Ms. JULIE S. JOHNSON
IMPORT COMPLIANCE SPECIALIST
HONEYWELL H&BC
1985 Douglas Drive North
Golden Valley, MN 55422

Re: Reconsideration of NY F89832; Time delay relay module.

DEAR Ms. JOHNSON:

This is in reference to your letter, dated November 28, 2000, to the National Commodity Specialist Division, New York, requesting reconsideration of New York Ruling Letter (NY) F89832, issued to you on August 15, 2000, which concerned the classification of a time delay relay module (model # ST82U) under the Harmonized Tariff Schedule of the United States (HTSUS). Your request was forwarded to this office for reply. NY F89832 classified the time delay relay module (model # ST82U) under subheading 8536.49.0080, HTSUS, which provides for other electrical delays. Descriptive literature was forwarded for our consideration. We have reviewed NY E87153 and believe that the classification set forth is incorrect.

Facts:

The article was described in NY F89832 as follows:

As indicated by the submitted descriptive literature, the relay, identified as the ST82U family, is described as operating on a time delay principle. It contains a time delay circuit that enables the relay to function at a specified time period.

In your November 28, 2000, letter, you state that the descriptive information and prints provided with your original ruling request indicate that the voltage of the time delay relay family is 24 volts. NY F89832 classified the time delay relay module (model # ST82U) under subheading 8536.49.0080, HTSUS, which provides for other electrical delays, with the term "other" referring to articles with voltages exceeding 1000V.

Literature provided with your request describes the function of the articles as follows:

The ST82 time delay relay is used in compressor-run air conditioning and heat pump systems. The ST82 delays the indoor blower shut-off after the compressor has shut off.

Issue:

Whether the "family" of time delay relay modules, model # ST82U (including model # ST82U1004) is classifiable under subheading 8536.41.00, HTSUS, which provides for other electrical relays for a voltage not exceeding 60V?

Law and Analysis:

The General Rules of Interpretation (GRIs) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The HTSUS provisions under consideration are as follows:

8536 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:

Relays:

8536.41.00 For a voltage not exceeding 60 V:

8536.49.00 Other.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the interna-

tional level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to Chapter 85 provide, in pertinent part, that the chapter covers "certain electrical goods not generally used independently, but designed to play a particular role as components, in electrical equipment, e.g., capacitors (heading 85.32), switches, fuses, junction boxes, etc. (heading 85.35 or 85.36)." The ENs to heading 8536 provide, in pertinent part, as follows:

These apparatus consist essentially of devices for making or breaking one or more circuits in which they are connected, or for switching from one circuit to another; they may be known as single pole, double pole, triple pole, etc., according to the number of switch circuits incorporated. This group also includes change-over switches and relays.

* * * * *

(C) Relays are electrical devices by means of which the circuit is automatically controlled by a change in the same or another circuit. They are used, for example, in telecommunication apparatus, road or rail signalling apparatus, for the control or protection of machine-tools, etc.

The various types can be distinguished by, for example:

* * * * *

(2) The predetermined conditions on which they operate: maximum current relays, maximum or minimum voltage relays, differential relays, fast acting cut-out relays, time delay relays, etc.

The time delay relay modules are classifiable at GRI 1 under heading 8536, HTSUS. The evidence presented in the letter requesting reconsideration, corroborated by the descriptive literature, demonstrates that "the voltage of this time delay relay family is 24 volts." Such articles with voltages not exceeding 60V are classifiable under subheading 8536.41.00, HTSUS. The time delay relay modules will be so classified.

Holding:

The "family" of time delay relay modules, model # ST82U (including model # ST82U1004) is classifiable under subheading 8536.41.00, HTSUS, which provides for other electrical relays for a voltage not exceeding 60V.

Effect on Other Rulings:

NY F89832 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CAMOUFLAGE PRINTED FLEECE GLOVES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of camouflage printed fleece gloves.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification of camouflage printed fleece gloves under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice.

DATE: Comments must be received on or before January 11, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textile Branch (202) 927-2511.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility"**. These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise,

and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter relating to the classification of camouflage printed fleece gloves. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) G86506, dated February 13, 2001, this notice covers any rulings on such merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the issues subject to this notice, should advise Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during the notice period. An importer's failure to advise Customs of the substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY G86506, dated February 13, 2001, Customs classified camouflage printed fleece gloves (Style Number 134104) as knit gloves of man-made fibers within subheading 6116.93.9400, HTSUS, textile category 631, which provides for "Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other: With fourchettes." Since the issuance of this ruling, Customs has reviewed the classification of the gloves and has determined that the cited ruling is in error. Accordingly, we intend to revoke NY G86506, as we find that the camouflage printed fleece gloves are classifiable as gloves specially designed for use in sports within subheading 6116.93.0800, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY G86506 (see "Attachment A" to this document) and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964901 (see "Attachment B" to this document).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 21, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, February 13, 2001.
CLA-2-61:RR:NC:TA:354 G86506
Category: Classification
Tariff No. 6116.93.9400

MR. JOHN B. PELLEGRINI
ROSS & HARDIES
*Park Avenue Tower
65 East 55th Street
New York, NY 10022-3219*

Re: The tariff classification of gloves from China.

DEAR MR. PELLEGRINI:

In your letter dated January 22, 2000, you requested a classification ruling on behalf of Paris Asia, Ltd. The provided sample will be returned as per your request.

Style 134104 is half-fingered glove constructed of a camouflage printed polyester fleece glove with a vinyl coated fabric reinforcement at the center of the palm, fourchettes and an elasticized wrist. The glove will be sold in one size fits all and will also be available in different camouflage patterns as styles 131104, 132104, and 133104.

The applicable subheading for all styles will be 6116.93.9400, Harmonized Tariff Schedule of the United States (HTS), which provides for Gloves, mittens and mitts, knitted or crocheted: other: of synthetic fibers: other: other: with fourchettes. The duty rate will be 19 percent ad valorem.

All styles fall within textile category designation 631. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Brian Burtnik at 212-637-7083.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,
Washington, DC.CLA-2 RR:TC:TE 964901 TMF
Category: Classification
Tariff No. 6116.93.08.00JOHN PELLEGRINI, ESQUIRE
ROSS & HARDIES
Park Avenue Tower
65 East 55th Street
New York, NY 10022-3219

Re: Revocation of NY G86506; classification of camouflage printed fleece gloves; sports gloves; specially designed for use in hunting.

DEAR MR. PELLEGRINI:

This letter is in response to your letter dated March 6, 2001, in which you requested on behalf of your client, Paris Asia, Ltd., reconsideration of NY G86506, dated February 13, 2001, classifying fleece camouflage printed gloves in subheading 6116.93.9400, Harmonized Tariff Schedule of the United States (HTSUS). Your letter along with a sample was forwarded to this office for our reply.

Facts:

The sample submitted, identified as Style Number 134104 is a half-fingered glove composed of polyester rayon fleece fabric that is printed in a green and brown camouflage style. It has an elasticized wrist and hemmed cuff. The palm side portion of the glove is composed of cellular polyvinyl chloride (PVC) plastic overlay material that extends across the palm portion and is sewn on top of the fleece fabric.

In NY G86506, Customs classified the instant article as a knit glove of man-made fibers within subheading 6116.93.9400, HTSUS, which provides for "Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other: Other: With fourchettes."

You assert that the article is classifiable as a sports glove within subheading 6116.93.0800, HTSUS, as a glove specially designed for use in sports, and submit three advertisements of similarly constructed half-fingered fleece gloves. In each ad, the items are depicted as hunting gloves. Two of the ads indicate that the gloves are "perfect for gun or bow hunting" and that they will "protect your hands from biting cold." Also provided are copies of hangtags to indicate the particular camouflage pattern used. In addition, a copy of the retailer's "Ozark Trail" tag is shown.

Issue:

Whether the gloves are classified as "gloves * * * specially designed for use in sports" within subheading 6116.93.0800, HTSUS.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRI's). GRI 1, HTSUS, provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Where goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRI's 2 through 6, HTSUS, may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (EN's) are the official interpretation of the Harmonized System at the international level. We refer specifically to the Explanatory Notes, which govern heading 6116, HTSUS. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

6116	Gloves, mittens and mitts, knitted or crocheted:
6116.93	Of synthetic fibers:

6116.93.0800	Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts, Other: Other:
6116.93.8800	Without fourchettes
6116.93.9400	With fourchettes

GRI 3b

The subject article is composed of PVC material and polyester rayon material. If the PVC material imparts the essential character to the gloves, classification under Chapter 39, HTSUS, would be appropriate. However, if the synthetic, woven textile material imparts the essential character of the gloves, classification under Chapter 62, HTSUS, would be appropriate.

Inasmuch as the instant gloves are composed of different materials, GRI 3 is applicable. Its relevant portions read as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods * * * those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The EN for GRI 3(b) reads in pertinent part as follows:

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In applying the criteria set forth in EN VIII to GRI 3(b), we find it is possible to make a definitive essential character determination in this instance.

In past rulings, Customs has often analyzed the role of the palm material in relation to the use of the glove in making an essential character determination. See Headquarters Ruling Letters (HQ) 951752 (9/2/92); HQ 085561 (12/6/89); HQ 083656 (6/6/89); and HQ 956463 (9/8/94). In those rulings, the various palm materials imparted the essential character to the gloves because the materials were clearly designed to enhance the wearer's "grip" while he or she participated in such activities as snow skiing, jet skiing, golfing and biking. Some of the palms had specialized features such as padding and a nub-like texture in order to enhance grip.

However, unlike the glove rulings above, the instant glove differs as its PVC material does not extend from the fingertips to the wrist. Rather, its PVC material is limited to the palm. Also, since the PVC material covers less than 30% of the surface area, we do not believe that it contributes to the overall appeal of the glove and is not dispositive of the glove's use. Therefore, we find that the polyester rayon fleece material imparts the essential character to the gloves.

Design and use in a sport

In order for the gloves at issue to be classified within subheading 6116.93.0800, HTSUS, we must consider the following: (1) whether hunting is a sport, and (2) whether the gloves at issue are specially designed for use in hunting. See HQ 951219, dated June 26, 1992 (classifying a leather motorcycle-racing glove as a glove for use in sports within subheading 4203.21.8060, HTSUS).

The term "sport" is defined by *The Random House Dictionary of the English Language*, the Unabridged Edition (1983) as: "1. an athletic activity requiring skill or physical prowess and often of a competitive nature, as racing, baseball, tennis, golf, bowling, wrestling, boxing, hunting, fishing, etc. 2. a particular form of this, esp. in the out of doors." Hunting clearly meets the definition of a sport. Further, Customs has taken the position that hunting and shooting activities are sports for tariff purposes. See HQ 088981, dated July 18, 1991 (referring to HQ 083694, dated May 16, 1989, and HQ 066484, dated January 7, 1981.)

As subheading 6116.93.0800 is a use provision, we consider the glove as a whole in order to determine its use as a hunting glove. In determining whether the subject gloves are specifically designed for use in hunting, we consider HQ 089769, dated October 8, 1991. In that ruling, Customs recognized the following glove design characteristics as indicative of "some intent to design gloves as hunting gloves." The cited features include:

- a non-skid reinforcement, which includes the two shooting fingers;
- a camouflage outer shell or outer shell with enhanced visibility;
- insulation that enhances warmth without creating excess bulk; and
- a hook and clasp closure.

As the instant glove meets three of the four criteria set forth above, we find evidence that the intent to design the article as hunting gloves is present. First, the palm area of Style 134104 is covered with a textured surface to impart a non-skid reinforcement. Second, the gloves are designed with hunting in mind. The brown and green camouflage gloves allow the wearer to conceal his/her hands when necessary. Third, the glove is made of a material that provides warmth without creating unwanted bulk.

Not only does style 134104 possess three of the four features, thereby creating a presumption that the gloves are specifically designed as hunting gloves, its half-fingered design provides better grip and access to a firearm or bow during hunting. See HQ 957042, dated January 18, 1995 (noting that a brown and black camouflage glove met four criteria of HQ 089769, but also had additional features such as a finger-tip access to the trigger and "action back" pleat design which are indicative of a design for use as a hunting glove with-in subheading 6216.00.4600, HTSUS.)

Based on the foregoing evidence, we find that style 134104 has been specially designed for sports use, including, but not limited to hunting, and therefore warrants classification under subheading 6116.93.0800, HTSUS, which provides for, *inter alia*, gloves specially designed for use in sports.

Holding:

Style 134104 is classified as a glove specially designed for use in sports within subheading 6116.93.0800, HTSUS. The general column one duty rate is 3.6 ad valorem.

NY G86506, dated February 13, 2001, is hereby revoked.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF BUOYANCY COMPENSATORS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letters and revocation of treatment relating to the classification of buoyancy compensators.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of buoyancy compensators. Similarly, Customs proposes to revoke any treatment previously accorded by it to

substantially identical merchandise that is contrary to the position set forth in this notice. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before January 11, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch: (202) 927-2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke two rulings relating to the tariff classification of buoyancy compensators. Although in this notice Customs is specifically referring to the revocation of New York Ruling Letter (NY) E82612, dated June 14, 1999, (attachment A), and NY F83415, dated March 22, 2000 (attachment B); this notice covers any rulings on this merchandise which may exist but have not been specifically identified that are contrary to the position set forth in this notice. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or

protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise that is contrary to the position set forth in this notice. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice that is contrary to the position set forth in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY E82612, Customs classified a buoyancy compensator jacket under subheading 6210.50.5055, HTSUSA, which provides in pertinent part, for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Of man-made fibers: Other * * * Other." The buoyancy compensator was described as a jacket composed of a shell of woven 100% nylon coated on the inside with polyurethane. The buoyancy compensator was designed for diving, having an inflatable bladder, woven polypropylene straps, a buoyancy compensator hose retainer, a rear adjustable buckle, strap and harness for air tanks, and a padded inner back for comfort. Based on our analysis of the scope of the terms of subheading 6210.50.5055, HTSUSA, and 9506.29.0040, HTSUSA, the Legal Notes, and the Explanatory Notes, the buoyancy compensators of the type discussed herein, are classifiable under subheading 9506.29.0040, HTSUSA, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other, Other."

In NY F83415, dated March 22, 2000, Customs classified five buoyancy compensator jackets under subheading 6211.43.0091, HTSUSA, which provides, in pertinent part, for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls: Of man-made fibers, Other." The buoyancy compensators were described as jackets used during underwater diving. All of the jackets were made of a woven 100% nylon fabric. All had features such as a carry handle, stainless steel rings, inflatable/deflatable bladders, weight pockets with dump ability, accessory clips, adjustable arms, chest and waist straps, hose retainer, storage pockets, utility rings and padded backs. Based on our

analysis of the scope of the terms of subheading 6211.43.0091, HTSUSA, and 9506.29.0040, HTSUSA, the Legal Notes, and the Explanatory Notes, the buoyancy compensators of the type discussed herein, are classifiable under subheading 9506.29.0040, HTSUSA, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other, Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY E82612 and NY F83415 and any other ruling not specifically identified, that is contrary to the position set forth in this notice, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 965312 & HQ 965313 (attachments C and D respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the position set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 21, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 14, 1999.
CLA-2-62:RR:NC:3:353 E82612
Category: Classification
Tariff No. 6210.50.5055

MR/MS. J. WOOLLEY
TABATA USA INC.
2380 Mira Mar Ave.
Long Beach, CA 90815

Re: The tariff classification of buoyancy compensator jackets from Taiwan.

DEAR MR./MS. WOOLLEY:

In your letter dated May 17, 1999 you requested a classification ruling. The sample submitted with the ruling request will be returned to you.

The submitted sample is a B.C. Jacket (buoyancy compensator jacket) which is composed of a shell of woven 100% nylon fabric coated inside with polyurethane. The jacket is used for scuba diving and features woven polypropylene straps, a buoyancy compensator hose retainer, a rear adjustable buckle, strap and harness for air tanks, and a padded inner

back for comfort. The jacket's buoyancy compensator is adjustable and can be easily inflated and deflated. There is a wide adjustable cummerbund with hook and loop closure, an adjustable shoulder buckle with a quick-release feature, and two flap side pockets with hook and loop closure.

The applicable subheading for the B.C. Jacket will be 6210.50.5055, Harmonized Tariff Schedule of the United States (HTS), which provides for 'Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Of man-made fibers: Other * * * Other.' The duty rate will be 7.4% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-637-7084.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

New York NY, March 22, 2000.

CLA-2-62:RR:NC:3:353 F83415

Category: Classification

Tariff No. 6211.43.0091

MR. TOM PACIAFFI
CORONET BROKERS CORP.
P.O. Box 300764
Cargo Building 80
John F. Kennedy International Airport
Jamaica, NY 11430-0764

Re: The tariff classification of a buoyancy compensator jacket from Italy.

DEAR MR. PACIAFFI:

In your letter dated March 2, 2000, on behalf of Cressi Sub USA, you requested a tariff classification ruling. No sample was submitted, but detailed descriptive literature was supplied. Your request for a classification ruling on the Cressi GX1 Console and Cressi GX1 Air/Nitrox Computer will be answered in a separate ruling.

The items are Styles Air, Safety 108, Safety 104, Safety 102, Aquapro 6 and Aquapro 5 Buoyancy Compensator Jackets. The jackets are used during underwater diving. All jackets are made of a woven 100% nylon fabric. Although the styles vary, they feature such items as a carry handle, stainless steel rings, inflatable/deflatable bladders, weight pockets with dump ability, accessory clips, adjustable arm, chest and waist straps, hose retainer, storage pockets, utility rings and padded backs.

The applicable subheading for the Styles Air, Safety 108, Safety 104, Safety 102, Aquapro 6 and Aquapro 5 Buoyancy Compensator Jackets will be 6211.43.0091, Harmonized Tariff Schedule of the United States (HTS), which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Other." The rate of duty will be 16.4% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-637-7084.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 965312 JFS
Category: Classification
Tariff No. 9506.29.0040

MR. OR MRS. J. WOOLLEY
TABATA USA, INC.
2380 Mira Mar Ave.
Long Beach, CA 90815

Re: Revocation of NY E82612, dated June 14, 1999; Classification of Buoyancy Compensator Jacket; Dive Equipment; Chapter 95; Not Wearing Apparel.

DEAR MR. OR MRS. WOOLLEY:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) E82612, issued to you on June 14, 1999, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a buoyancy compensator. After review of that ruling, it has been determined that the classification the buoyancy compensator in subheading 6210.50.5055, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY E82612.

Facts:

The item that is the subject of this revocation is known as a buoyancy compensator. It was classified in subheading 6210.50.5055, HTSUSA, which provides, in pertinent part, for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Of man-made fibers: Other * * * Other." The buoyancy compensator was described in NY E82612 as follows:

The submitted sample is a B.C. Jacket (buoyancy compensator jacket) which is composed of a shell of woven 100% nylon fabric coated inside with polyurethane. The jacket is used for scuba diving and features woven polypropylene straps, a buoyancy compensator hose retainer, a rear adjustable buckle, strap and harness for air tanks, and a padded inner back for comfort. The jacket's buoyancy compensator is adjustable and can be easily inflated and deflated. There is a wide adjustable cummerbund with hook and loop closure, an adjustable shoulder buckle with a quick-release feature, and two flap side pockets with hook and loop closure.

Issue:

Is the buoyancy compensator classifiable as dive equipment under subheading 9506.29.0040, HTSUSA?

Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

Chapter 62 covers articles of apparel that are not knitted or crocheted. In order to classify the buoyancy compensator in Chapter 62, HTSUSA, it must be considered wearing apparel. Buoyancy compensators are designed to be worn and, therefore, fall generally within the class or kind of articles considered wearing apparel. See *Arnold v. United States*, 147 U.S. 494, 496 (1892). See also HQ 952204, dated April 12, 1993. However, all things worn by humans are not necessarily wearing apparel. See *Dynamics Classics, Ltd. v. United States*, Slip. Op. 86-105, 10 C.I.T. 666 (Oct. 17, 1986) (plastic suits used for weight reduction inappropriate for wear during exercise or work not wearing apparel); *Antonio Pompeo v. United States*, 40 Cust. Ct. 362, C.D. 2006 (1958) (crash helmets not wearing apparel); *Best v. United States*, 1 Ct. Cust. Appls. 49, T.D. 31009 (1910) (ear caps for prevention of abnormal ear growth not wearing apparel). "Admiral Craft Equipment developed the standard that items are not considered wearing apparel when the use of

those items goes 'far beyond that of general wearing apparel.'¹ *Daw Industries, Inc. v. United States*, 714 F.2d 1140, 1143 (Fed. Cir. 1983). In *Daw Industries* the Court found that sheaths and socks used exclusively with prostheses do not provide "significantly more, or essentially different," protection than analogous articles of clothing, but merely "differ incrementally." The Court concluded that while in some cases the differences may become so large that the article is no longer wearing apparel, that was not the case with the sheaths and socks.

In HQ 952204, dated April 12, 1993, Customs applied the reasoning relied upon in *Daw Industries* when considering the classification of a "swim sweater" which is a flotation device that functions as a swimming aid for children. Customs found that while the "swim sweater" provides some protection from the elements and arguably adorns the body, it is used in very specific situations. Customs concluded that the increment in the difference in use and effect between the "swim sweater" and a conventional sweater is so large that the "swim sweater" is no longer wearing apparel. For additional rulings finding that "swim sweaters" are not wearing apparel, see HQ 952483, dated May 27, 1993; HQ 95590, dated January 31, 1994; HQ 953775, dated April 12, 1993; and HQ 953776, dated April 12, 1993.

The use of a buoyancy compensator like the one discussed herein, whether in the form of a vest or a jacket, goes far beyond that of a typical jacket or vest. Buoyancy compensators are designed to provide SCUBA divers with neutral buoyancy.² "Divers usually seek a condition of neutral to slightly negative buoyancy. * * * Neutral buoyancy enhances a scuba diver's ability to swim easily, change depth, and hover."³ U.S. Navy Diving Manual, 2-9.4.2, p. 2-14. In order to maintain neutral buoyancy, divers use a combination of inflatable air bladders contained within the buoyancy compensator and weights.

In HQ 950562, dated January 9, 1992, Customs classified a Stratus snorkeling vest designed to provide surface flotation as well as warmth as a garment. This ruling was affirmed in HQ 952483, dated May 27, 1993. The vest was constructed by bonding a flotation pocket to a neoprene vest. Relying on the EN to Heading 6113, HTS (heading includes oilskins & divers' suits), Customs reasoned that if the neoprene vest were imported without the flotation pocket, it would be classified as a garment. Customs next considered, in light of *Daw Industries*, supra, whether the additional protection and other advantages afforded by the flotation pocket were "significantly more, or essentially different," than those provided by the neoprene vest alone. Because marketing materials stated that the vest was "designed to provide warmth and a small amount of flotation," Customs concluded that the snorkeling vest did not differ significantly from a neoprene vest alone, and affirmed HQ 950562.

Whereas the snorkel vest had dual functions of providing warmth and buoyancy, the entire design of buoyancy compensators is centered around buoyancy control. While features such as padding provide some warmth and protection, these benefits are ancillary to the function of allowing the diver to control her buoyancy. The instant buoyancy compensator is not a garment or wearing apparel.

Customs has classified some articles with similar features to the instant buoyancy compensator in Chapter 63 as lifejackets or lifebelts. In HQ 952204 (classifying the swim sweaters discussed above), Customs relied upon the following definitions of lifejackets and lifebelts:

Webster's New World Dictionary, Third College Edition (1988) defines a life preserver as a "buoyant device for saving a person from drowning by keeping the body afloat, as a ring or sleeveless jacket of canvas-covered cork or kapok." Buoyancy is defined as "the ability or tendency to float or rise in liquid or air." A life belt is defined as "a life preserver in the form of a belt," and a life jacket (or vest) as "a life preserver in the form of a sleeveless jacket or vest."

Customs noted that the swim sweaters did not meet U.S. Coast Guard specifications for life preservers. However, because they meet the common definition of a life preserver, they were classifiable as such.

Likewise, in HQ 950496, dated March 5, 1992, Customs classified a windsurfer's buoyancy vest within subheading 6307.20, HTSUSA, as a lifejacket, even though it did not

¹ *Admiral Craft Equipment, Corp. v. United States*, 82 Cust. Ct. 162, C.D. 4796 (1979).

² The acronym SCUBA stands for "Self Contained Underwater Breathing Apparatus." U.S. Navy Diving Manual, Appx. 1D-9.

³ Negative buoyancy gives a diver in a helmet and dress (Navy term for apparel and gear) a better foothold on the bottom. U.S. Navy Diving Manual, 2-9.4.2, p. 2-14.

meet the U.S. Coast Guard specifications for life preservers. See also HQ 952930, dated February 25, 1993. The basis of this ruling was that while the article did not meet U.S. Coast Guard specifications, its main purpose was to help keep the wearer afloat. See also NY G87464, dated March 13, 2001 (classifying a bib-like snorkel vest as a lifejacket under subheading 6307.20, HTSUSA).⁴

In contrast, the primary function of a buoyancy compensator is to control buoyancy, be it negative buoyancy or positive buoyancy, at all stages of a dive. While a buoyancy compensator can be, and is, used to help divers float on the surface, this is merely one end of the spectrum of its capabilities. At the other end of the spectrum, divers can deflate the buoyancy compensator allowing them to descend to their desired depth, at which point the buoyancy compensator can be inflated as needed to maintain neutral buoyancy. The inflatable bladder, inflation tube with mouthpiece, exhaust valve and weight pouches makes this vest an adjustable apparatus that acts to increase or decrease buoyancy to counteract the weight of the air tank or the buoyancy of a wet suit.

Subheading 9506.29.00.40, HTSUSA, provides for:

Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other, Other.

The EN to heading 9506, HTSUSA, state:

This heading covers:

* * * * *

(B) Requisites for other sports and outdoor games * * *, e.g.:

* * * * *

(2) Water-skis, surf-boards, sailboards and other water-sports equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.

The legal note to Chapter 95 excludes sports clothing of chapters 61 and 62. However, this exclusionary note does not operate to exclude buoyancy compensators from Chapter 95 because, as discussed above, buoyancy compensators are not clothing.

It is well settled that equipment used for scuba diving is classified in subheading 9506.29.0040, HTSUSA. See, *H.I.M./Fathom, Inc., v. United States*, 21 C.I.T. 776, 981 F. Supp. 610 (classifying a weight belt used for diving in subheading 9506.29.0040, HTSUSA (1997)); NY 81357, dated August 23, 1995, and NY G86744, dated February 12, 2001, (classifying weight belts as diving equipment). The instant buoyancy compensator that is equipped with an air bladder, inflation hose, exhaust valve, weight pouches and compressed air tank harness, is clearly a piece of equipment designed for scuba diving. Accordingly, it is classified as dive equipment under subheading 9506.29.0040, HTSUSA. For similar rulings on buoyancy compensators, see HQ 965106 and HQ 965313.

Holding:

The instant buoyancy compensator is classified under subheading 9506.29.0040, HTSUSA, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other, Other." The duty rate is FREE.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN DURANT,
Director,
Commercial Rulings Division.

⁴ Unlike the snorkel vest in HQ 950562, this snorkel vest only consisted of the flotation bib and did not have a neoprene vest to add warmth and protection.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:TE 965313 JFS

Category: Classification

Tariff No. 9506.29.0040

MR. TOM PACIAFFI
CORONET BROKERS CORP.
P.O. Box 300764
Cargo Building 80
John F. Kennedy International Airport
Jamaica, NY 11430-0764

Re: Revocation of NY F83415, dated March 22, 2000; Classification of Buoyancy Compensator Vests; Dive Equipment; Chapter 95; Not Wearing Apparel.

DEAR MR. PACIAFFI:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) F83415, issued to you on behalf of your client Cressi Sub USA, on March 22, 2000, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of five buoyancy compensators. After review of that ruling, it has been determined that the classification the buoyancy compensators in subheading 6211.43.0091, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY F83415.

Facts:

The items that are the subject of this revocation are known as buoyancy compensators. In NY F83415, they were classified in subheading 6211.43.0091, HTSUSA, which provides, in pertinent part, for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Other." The buoyancy compensators were described as follows:

The items are Styles Air, Safety 108, Safety 104, Safety 102, Aquapro 6 and Aquapro 5 Buoyancy Compensator Jackets. The jackets are used during underwater diving. All jackets are made of a woven 100% nylon fabric. Although the styles vary, they feature such items as a carry handle, stainless steel rings, inflatable/deflatable bladders, weight pockets with dump ability, accessory clips, adjustable arm, chest and waist straps, hose retainer, storage pockets, utility rings and padded backs.

Issue:

Are the buoyancy compensators classifiable as dive equipment under subheading 9506.29.0040, HTSUSA?

Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

Chapter 62 covers articles of apparel that are not knitted or crocheted. In order to classify the buoyancy compensator in Chapter 62, HTSUSA, it must be considered wearing apparel. Buoyancy compensators are designed to be worn and, therefore, fall generally within the class or kind of articles considered wearing apparel. See *Arnold v. United States*, 147 U.S. 494, 496 (1892). See also HQ 952204, dated April 12, 1993. However, all things worn by humans are not necessarily wearing apparel. See *Dynamics Classics, Ltd. v. United States*, Slip. Op. 86-105, 10 C.I.T. 666 (Oct. 17, 1986) (plastic suits used for weight reduction inappropriate for wear during exercise or work not wearing apparel); *Antonio Pompeo v. United States*, 40 Cust. Ct. 362, C.D. 2006 (1958) (crash helmets not wearing apparel); *Best v. United States*, 1 Ct. Cust. Appls. 49, T.D. 31009 (1910) (ear caps for prevention of abnormal ear growth not wearing apparel). "Admiral Craft Equipment developed the standard that items are not considered wearing apparel when the use of

those items goes "far beyond that of general wearing apparel."¹ *Daw Industries, Inc. v. United States*, 714 F.2d 1140, 1143 (Fed. Cir. 1983). In *Daw Industries* the Court found that sheaths and socks used exclusively with prostheses do not provide "significantly more, or essentially different," protection than analogous articles of clothing, but merely "differ incrementally." The Court concluded that while in some cases the differences may become so large that the article is no longer wearing apparel, that was not the case with the sheaths and socks.

In HQ 952204, dated April 12, 1993, Customs applied the reasoning relied upon in *Daw Industries* when considering the classification of a "swim sweater" which is a flotation device that functions as a swimming aid for children. Customs found that while the "swim sweater" provides some protection from the elements and arguably adorns the body, it is used in very specific situations. Customs concluded that the increment in the difference in use and effect between the "swim sweater" and a conventional sweater is so large that the "swim sweater" is no longer wearing apparel. For additional rulings finding that "swim sweaters" are not wearing apparel, see HQ 952483, dated May 27, 1993; HQ 95590, dated January 31, 1994; HQ 953775, dated April 12, 1993; and HQ 953776, dated April 12, 1993.

The use of buoyancy compensators like the ones discussed herein, whether in the form of a vest or a jacket, goes far beyond that of a typical jacket or vest. Buoyancy compensators are designed to provide SCUBA divers with neutral buoyancy.² "Divers usually seek a condition of neutral to slightly negative buoyancy. * * * Neutral buoyancy enhances a scuba diver's ability to swim easily, change depth, and hover."³ U.S. Navy Diving Manual, 2-9.4.2, p. 2-14. In order to maintain neutral buoyancy, divers use a combination of inflatable air bladders contained within the buoyancy compensator and weights.

In HQ 950562, dated January 9, 1992, Customs classified a Stratus snorkeling vest designed to provide surface flotation as well as warmth as a garment. This ruling was affirmed in HQ 952483, dated May 27, 1993. The vest was constructed by bonding a flotation pocket to a neoprene vest. Relying on the EN to Heading 6113, HTS (heading includes oilskins & divers' suits), Customs reasoned that if the neoprene vest were imported without the flotation pocket, it would be classified as a garment. Customs next considered, in light of *Daw Industries*, supra, whether the additional protection and other advantages afforded by the flotation pocket were "significantly more, or essentially different," than those provided by the neoprene vest alone. Because marketing materials stated that the vest was "designed to provide warmth and a small amount of flotation," Customs concluded that the snorkeling vest did not differ significantly from a neoprene vest alone, and affirmed HQ 950562.

Whereas the snorkel vest had dual functions of providing warmth and buoyancy, the entire design of buoyancy compensators is centered around buoyancy control. While features such as padding provide some warmth and protection, these benefits are ancillary to the function of allowing the diver to control her buoyancy. The instant buoyancy compensators are not garments or wearing apparel.

Customs has classified some articles with similar features to the instant buoyancy compensators in Chapter 63 as lifejackets or lifebelts. In HQ 952204 (classifying the swim sweaters discussed above), Customs relied upon the following definitions of lifejackets and lifebelts:

Webster's New World Dictionary, Third College Edition (1988) defines a life preserver as a "buoyant device for saving a person from drowning by keeping the body afloat, as a ring or sleeveless jacket of canvas-covered cork or kapok." Buoyancy is defined as "the ability or tendency to float or rise in liquid or air." A life belt is defined as "a life preserver in the form of a belt," and a life jacket (or vest) as "a life preserver in the form of a sleeveless jacket or vest."

Customs noted that the swim sweaters did not meet U.S. Coast Guard specifications for life preservers. However, because they meet the common definition of a life preserver, they were classifiable as such.

Likewise, in HQ 950496, dated March 5, 1992, Customs classified a windsurfer's buoyancy vest within subheading 6307.20, HTSUSA, as a lifejacket, even though it did not

¹ *Admiral Craft Equipment, Corp. v. United States*, 82 Cust. Ct. 162, C.D. 4796 (1979).

² The acronym SCUBA stands for "Self Contained Underwater Breathing Apparatus." U.S. Navy Diving Manual, Appx. 1D-9.

³ Negative buoyancy gives a diver in a helmet and dress (Navy term for apparel and gear) a better foothold on the bottom. U.S. Navy Diving Manual, 2-9.4.2, p. 2-14.

meet the U.S. Coast Guard specifications for life preservers. See also HQ 952930, dated February 25, 1993. The basis of this ruling was that while the article did not meet U.S. Coast Guard specifications, its main purpose was to help keep the wearer afloat. See also NY G87464, dated March 13, 2001 (classifying a bib-like snorkel vest as a lifejacket under subheading 6307.20, HSUSA).⁴

In contrast, the primary function of a buoyancy compensator is to control buoyancy, be it negative buoyancy or positive buoyancy, at all stages of a dive. While a buoyancy compensator can be, and is, used to help divers float on the surface, this is merely one end of the spectrum of its capabilities. At the other end of the spectrum, divers can deflate the buoyancy compensator allowing them to descend to their desired depth, at which point the buoyancy compensator can be inflated as needed to maintain neutral buoyancy. The inflatable bladder, inflation tube with mouthpiece, exhaust valve and weight pouches makes this vest an adjustable apparatus that acts to increase or decrease buoyancy to counteract the weight of the air tank or the buoyancy of a wet suit.

Subheading 9506.29.00.40, HTSUSA, provides for:

Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other, Other.

The EN to heading 9506, HTSUSA, state:

This heading covers:

- * * * * *
- (B) Requisites for other sports and outdoor games * * *, e.g.:
- * * * * *
- (2) Water-skis, surf-boards, sailboards and other water-sports equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.

The legal note to Chapter 95 excludes sports clothing of chapters 61 and 62. However, this exclusionary note does not operate to exclude buoyancy compensators from Chapter 95 because, as discussed above, buoyancy compensators are not clothing.

It is well settled that equipment used for scuba diving is classified in subheading 9506.29.0040, HTSUSA. See, *H.I.M./Fathom, Inc., v. United States*, 21 C.I.T. 776, 981 F. Supp. 610 (classifying a weight belt used for diving in subheading 9506.29.0040, HTSUSA (1997)); NY 81357, dated August 23, 1995, and NY G86744, dated February 12, 2001, (classifying weight belts as diving equipment). The instant buoyancy compensators that are equipped with an air bladder, inflation hose, exhaust valve, weight pouches and compressed air tank harness, are clearly pieces of equipment designed for scuba diving. Accordingly, they are classified as dive equipment under subheading 9506.29.0040, HTSUSA. For similar rulings on buoyancy compensators, see HQ 965106 and HQ 965312.

Holding:

The Safety 108, Safety 104, Safety 102, Aquapro 6 and Aquapro 5 buoyancy compensators are classified under subheading 9506.29.0040, HTSUSA, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other, Other." The duty rate is FREE.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN DURANT,

Director,

Commercial Rulings Division.

⁴ Unlike the snorkel vest in HQ 950562, this snorkel vest only consisted of the flotation bib and did not have a neoprene vest to add warmth and protection.

PROPOSED REVOCATION & MODIFICATION OF CUSTOMS RULING LETTERS & TREATMENT RELATING TO TARIFF CLASSIFICATION OF WOMEN'S KNIT SWEATERCOATS

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of proposed revocation and modification of tariff classification ruling letters and treatment relating to the classification of women's knit sweatercoats.

SUMMARY: Pursuant to Section 625 (c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke certain ruling letters pertaining to the tariff classification of women's knit sweatercoats. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before January 11, 2002.

ADDRESS: Written comments (preferable in triplicate) are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textiles Branch, (202) 927-1679.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends

to revoke certain rulings pertaining to the classification of women's knit sweatercoats. Although in this notice Customs is specifically referring to forty rulings, New York Ruling Letters ("NY") and Port Decision Ruling Letters ("PD") identified alphabetically as "Attachment D" through "Attachment SS" to this document, this notice also covers fifty other effected rulings as well as any rulings on this merchandise, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice and comment period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

In the aforementioned rulings, concerning the tariff classification of women's long knit sweatercoats, the products were erroneously classified as coats under heading 6102 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). However, due to the styling and use of the subject sweatercoats, it is Customs view that the garments are more properly classified in heading 6110, HTSUSA, as similar to sweaters, or as sweaters if consisting of a stitch count of 9 or fewer stitches per 2 centimeters measured on the outer surface of the fabric, in the direction in which the stitches are formed.

The items under review are described as sweatercoats which are longer in length than "traditional" sweaters yet do not provide as much protection from the weather as "traditional" coats of heading 6102. As a current fashion trend, the subject merchandise is worn for style and but for the long length, which varies in range from the knee to mid-thigh to the ankle, these garments would be considered to possess the characteristics of a sweater comparable to the merchandise in heading 6110, HTSUSA. The correct classification for the subject garments should be under heading 6110 of the HTSUSA as garments similar to a sweater or as a sweater if the stitch count requirements are fulfilled.

NY G84255 is set forth as "Attachment D" to this document. NY G87851 is set forth as "Attachment E" to this document. PD H80428 is set forth as "Attachment F" to this document. PD H80421 is set forth as "Attachment G" to this document. PD G89153 is set forth as "Attachment H" to this document. PD G89979 is set forth as "Attachment I" to this document. PD G89235 is set forth as "Attachment J" to this document. PD G89028 is set forth as "Attachment K" to this document. PD G89042 is set forth as "Attachment L" to this document. PD G88353 is set forth as "Attachment M" to this document. PD G89027 is set forth as "Attachment N" to this document. PD G86955 is set forth as "Attachment O" to this document. PD F85294 is set forth as "Attachment P" to this document. PD H81162 is set forth as "Attachment Q" to this document. NY G87180 is set forth as "Attachment R" to this document. NY G86423 is set forth as "Attachment S" to this document. NY G89855 is set forth as "Attachment T" to this document. NY G82426 is set forth as "Attachment U" to this document. NY G85312 is set forth as "Attachment V" to this document. PD G89362 is set forth as "Attachment W" to this document. PD G86918 is set forth as "Attachment X" to this document. PD G87392 is set forth as "Attachment Y" to this document. PD G87881 is set forth as "Attachment Z" to this document. NY G80138 is set forth as "Attachment AA" to this document. NY G80136 is set forth as "Attachment BB" to this document. "Attachment CC" to this document is omitted. NY G80130 is set forth as "Attachment DD" to this document. PD G80137 is set forth as "Attachment EE" to this document. NY F86148 is set forth as "Attachment FF" to this document. PD F82775 is set forth as "Attachment GG" to this document. NY G85916 is set forth as "Attachment HH" to this document. "Attachment II" to this document is omitted. NY G86050 is set forth as "Attachment JJ" to this document. PD H80571 is set forth as "Attachment KK" to this document. PD H80420 is set forth as "Attachment LL" to this document. PD G89023 is set forth as "Attachment MM" to this document. PD G88233 is set forth as "Attachment NN" to this document. PD G86813 is set forth as "Attachment OO" to this document. PD G86712 is set forth as "Attachment PP" to this document. PD G86510 is set forth as "Attachment QQ" to this document. PD F83090 is set forth as "Attachment RR" to this document. PD F83556 is set forth as "Attachment SS" to this document.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke the aforementioned 40 ruling letters, and the 50 other ruling letters identified as effected rulings in the Proposed HQ Ruling Letters attached to this document, and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUSA pursuant to the analysis set forth in Proposed Headquarter Rulings (HQ) 965182 (see "Attachment A" to this document); Proposed HQ 965183 (see "Attachment B" to this document); and Proposed HQ 965184 (see "Attachment C" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke

any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 26, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:TE 965182 mbg

Category: Classification

Tariff Nos. 6110.30.3055,

6110.20.2075, 6110.90.1060,

6110.10.2080, and 6110.30.3020.

Ms. MELBA R. DAIRO
FEDERATED MERCHANDISING GROUP
1440 Broadway
New York, NY 10018

Re: Classification of Women's Long "Sweatercoats"; Revocation of prior Customs rulings.

DEAR Ms. DAIRO:

Pursuant to your classification requests, Customs has previously issued Port Decision ("PD") Letters and New York Ruling Letters ("NY") to your company regarding the tariff classification of various long women's knitted "sweatercoats". These products were originally classified as women's knitted coats under heading 6102 of the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). Upon review, Customs has determined that the garments were erroneously classified. The correct classification for the garments should be under heading 6110, HTSUSA, based on classification as sweaters or garments similar to sweaters. Fourteen rulings involving sixteen samples are hereby revoked for the reasons set forth below.

Facts:

Sixteen samples were submitted to Customs for review in the fourteen rulings under review.

Sample 1, style 8234, is a woman's knit garment that is constructed from 90 percent acrylic, 5 percent wool, and 5 percent polyester. The garment extends from the shoulders to the knee area and features a rib knit pointed collar, long sleeves with turned back ribbed cuffs, and a full frontal opening with a five button ribbed placket. The garment also has two front ribbed patch pockets below the waist, a ribbed bottom, 2 belt loops and a self fabric tie closure at the waist. Style 8234 was originally the subject of NY G84255, dated December 6, 2000.

Sample 2, style 8081, is a woman's garment that is constructed from 75 percent silk and 25 percent nylon knit fabric. The garment extends from the shoulders to the knees and features a V-neckline, long tubular hemmed sleeves, a full frontal opening with eight button closures and a tubular hemmed bottom. Style 8081 was originally the subject of NY G87851, dated April 11, 2001.

Sample 3, style 18438, is a woman's knit garment of 100 percent cotton. The garment features a collar, long sleeves, belt closure and extends to the mid-calf in length. Style 18438 was originally the subject of PD H80428, dated May 22, 2001.

Sample 4, style 9702, is a woman's garment composed of 100 percent acrylic knit fabric constructed with nine or fewer stitches per two centimeters measured in the direction the stitches were formed. The garment features a full frontal opening with a six-button closure; a collar with loose fringe like pile; long sleeves; and a length which extends to below the calf. Style 9702 was originally the subject of PD H80421, dated May 29, 2001.

Sample 5, style 8078, is a woman's boiled wool garment. The garment features long sleeves, a shawl collar, a single front button closure and extends to the knee. Style 8078 was originally the subject of PD G89153, dated May 4, 2001.

Sample 6, style 9537, is a woman's garment constructed of 100 percent cotton 2 x 2 rib knitted fabric. The garment extends from the shoulders to the below mid-thigh and features a V-neckline, a full frontal opening with a six button closure, long sleeves, two large patch pockets below the waist, belt loops, a self fabric belt, and a straight edge bottom. Style 9537 was originally the subject of PD G89979, dated May 2, 2001.

Sample 7, style 9700, is a woman's long 100 percent acrylic knitted split front garment. It features a 1 x 1 rib collar, full frontal opening with loop and button front closure. The garment length measures 42 inches from the center back. There are 4 stitches per 2 centimeters in the horizontal direction and 5 stitches per 2 centimeters in the vertical direction. Style 9700 was originally the subject of PD G89235, dated April 30, 2001.

Sample 8, style 9700P, is a woman's long 100 percent acrylic knitted split front garment. It features a 1 x 1 rib collar, full frontal opening with loop and button front closure, long hemmed sleeves and a hemmed bottom. The garment length measures 36 inches from the center back. There are 4 stitches per 2 centimeter in the horizontal direction and 5 stitches per 2 centimeter in the vertical direction. Style 9700P was originally the subject of PD G89235, dated April 30, 2001.

Sample 9, style 9188, is a woman's knitted garment of 100 percent boiled wool. The garment extends from the shoulder to just below mid-thigh. It features a deep V-neckline, a full frontal opening with a single hook and eye closure at the center front of the garment, long hemmed sleeves and a straight hemmed bottom. Style 9188 was originally the subject of PD G89028, dated April 17, 2001.

Sample 10, style 9238, is a woman's garment of 100 percent cotton knit fabric. The garment extends from the shoulders to below the knee in length. It features a collar, long sleeves, a full frontal opening with a button closure, a tie belt of self fabric and self fabric belt loops. Style 9238 was originally the subject of PD G89042, dated April 10, 2001.

Sample 11, style 4028, is a woman's knitted garment composed of 90 percent acrylic and 10 percent polyester. The fabric measures less than nine stitches per two centimeters measured in the horizontal direction. The garment extends to the mid thigh and features a full frontal opening secured by six button closures. The garment also has a collar, long sleeves, a straight bottom, and a self fabric tie belt secured to the garment by two belt loops. Style 4028 was originally the subject of PD G88353, dated April 3, 2001.

Sample 12, style 9238, is a woman's knitted garment of 100 percent cotton fabric. The garment extends from the shoulders to below the knee in length. It features a collar, long sleeves, a full frontal opening with a button closure, a tie belt of self fabric and self fabric belt loops. Style 9238 was originally the subject of PD G89042, dated April 10, 2001.

Sample 13, style 9397, is a woman's garment composed of 55 percent acrylic and 45 percent cotton. It features a collar, full frontal opening with 6 button closure, a self fabric belt with two side loops, long sleeves, a self start cuff and bottom, and two patch pockets below the waist. The garment length measures 33 inches from the center back. There are 5 stitches per 2 centimeters in the horizontal direction and 7 stitches per 2 centimeters in the vertical direction. Style 9397 was originally the subject of PD G89027, dated April 10, 2001.

Sample 14, style 9668, is a woman's knitted garment of 100 percent acrylic. The length of the garment extends from the shoulder to the knee. The garment features a full frontal opening secured by six button closures, a collar, long sleeves with stitched turned back cuffs, patch pockets below the waist, belt loops and a detached self-fabric tie belt. Style 9668 was originally the subject of PD G86955, dated February 22, 2001.

Sample 15, style 8282W, is a woman's garment constructed of 90 percent polyester and 10 percent spandex knit fabric. The garment is below the knee in length and has a full front opening secured by a single button closure. The garment also features long sleeves with hemmed cuffs; a V-neckline and a hemmed bottom. Style 8282W was originally the subject of PD F85294, dated April 17, 2000.

Sample 16, style 19410B, is a woman's garment which is finely knit of 77 percent rayon and 23 percent nylon. The garment reaches to below the mid-thigh, has no means of closure, and features long hemmed sleeves, a hemmed bottom and a self fabric belt at the waist. Style 19410B was originally the subject of PD H81162, dated June 5, 2001.

Issue:

Whether the subject knit garments are more properly classified as jackets or coats in heading 6102, HTSUS, or as sweaters or garments similar to sweaters in heading 6110, HTSUS?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRI's"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the Harmonized System at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The issue in the instant case is whether the submitted samples are properly classifiable as women's sweaters or jackets or coats. There are two possible tariff classifications for the subject garments, heading 6102, HTSUS, which provides for, among other things, women's knit jackets and coats, and heading 6110, HTSUS, which provides for, among other things, women's knit sweaters and similar garments. Garments classified as sweaters or as similar to sweaters of heading 6110, HTSUS, may serve a dual purpose in that they may be worn either indoors or outdoors. The purpose of jackets or coats of heading 6102 on the other hand, is to provide the wearer protection against the elements over other outerwear, and thus they are worn principally outdoors. The determinative issue, therefore, is the manner in which these garments are primarily intended to be worn.

The Explanatory Notes (EN) to heading 6101, which apply *mutatis mutandis* to the articles of heading 6102, HTSUSA, state:

[T]his heading covers * * * [garments for women or girls'], characterised by the fact that they are *generally worn over all other clothing for protection against the weather*.

(emphasis added).

The EN to heading 6110, state:

This heading covers a category of knitted or crocheted articles, without distinction between male or female wear, *designed to cover the upper parts of the body* (jerseys, pullovers, cardigans, waistcoats and similar articles).

(emphasis added).

A strict application of the above ENs to the subject merchandise creates an obvious conflict. The long length of the garments would preclude classification within heading 6110 which specifically states that garments therein are designed for the upper body. Yet, the ENs for heading 6102 state that garments within the scope of that heading are designed to be worn for protection against the elements. The subject garments could not provide protection against the elements due to the lightweight yarns with which they were knit and the styling which is intended to satisfy a current fashion trend rather than provide extensive protection from the weather.

In a recent informed compliance publication, Customs provided basic definitions of textile terms which are commonly utilized in the HTSUS and by the trade community. These definitions are not intended to be definitive but rather to provide a basic guideline for classification purposes. In the informed compliance publication, sweaters, coats and jackets are defined as:

Sweaters (6110, 6111)—are knit garments that cover the body *from the neck or shoulders to the waist or below (as far as the mid-thigh or slightly below the mid-thigh)*. Sweaters may have a type of pocket treatment or any type of collar treatment, including a hood, or no collar, or any type of neckline. They may be pullover style or have a full partial front or back opening. They may be sleeveless or have sleeves of any length. Those sweaters provided for at the statistical level (9th and 10th digit of the tariff number) have a stitch count of 9 or fewer stitches per 2 centimeters measured

on the outer surface of the fabric, in the direction in which the stitches are formed. Also included in these statistical provisions are garments, known as sweaters, where, due to their construction (e.g., open-work raschel knitting), the stitches on the outer surface cannot be counted in the direction in which the stitches are formed. Garments with a full-front opening but which lack the proper stitch count for classification as a sweater may be considered "sweater-like" cardigans of heading 6110.

This term excludes garments that have a sherpa lining or a heavyweight fiberfill lining (including quilted lining), which are used to provide extra warmth to the wearer. Such garments, whether or not they have a sweater stitch-count, are classified in heading 6101 or 6102. This term also excludes cardigans that are tailored. Such garments are classified in heading 6103 or 6104.

(Emphasis added.)

Jackets—See "Suit-type jackets" and "Anoraks, windbreakers and similar articles."

Suit-type jackets—(6103, 6104, 6203, 6204)—are garments generally designed for wear over a lighter outer garment, on business or social occasions when some degree of formality is required. They are tailored, have a full frontal opening without a closure or with a closure other than a slide fastener (zipper), and have sleeves (of any length). They have three or more panels (excluding sleeves), of which two are at the front, sewn together lengthwise. They do not extend below the mid-thigh and are not for wear over another coat, jacket or blazer.

Anoraks, windbreakers and similar articles—(6101, 6102, 6113, 6201, 6202, 6210)—is a group of garments which includes:

Jackets, which are garments designed to be worn over another garment for protection against the elements. Jackets cover the upper body from the neck area to the waist area, but are generally less than mid thigh length. They normally have a full front opening, although some jackets may have only a partial front opening. Jackets usually have long sleeves. Knit jackets (due to the particular character of knit fabric) generally have tightening elements at the cuffs and at the waist or bottom of the garment, although children's garments or garments made of heavier material might not need these tightening elements. *This term excludes knit garments that fail to qualify as jackets because they do not provide sufficient protection against the elements. Such garments, if they have full-front openings, may be considered cardigans of heading 6110 (other).*

(Emphasis added.)

Coats—See "Overcoats, carcoats, capes, cloaks and similar garments"

Overcoats, carcoats, capes, cloaks and similar garments (6101, 6102, 6201, 6202)—is a group of outerwear garments which cover both the upper and lower parts of the body, and which are normally worn over other garments for warmth and protection from the weather. Overcoats and carcoats are thigh length or longer, with sleeves, with or without a means of closure, and with a full-front opening.

See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS* 34 Cust. B. & Dec. 52, 153 (Dec. 27, 2000).

Furthermore, in circumstances such as these, where the identity of a garment is ambiguous for classification purposes, reference to *The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, ("Guidelines") is appropriate. The *Guidelines* were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles.

Regarding the classification of sweaters, the *Guidelines* state that "garments commercially known as cardigans, sweaters, * * * cover the upper body from the neck or shoulders to the waist or below (as far as the mid-thigh area.)" Then further state, "Sweaters * * * may have a collar treatment of any type, including a hood, or no collar, and any type of neckline; they may be pullover style or have full or partial front or back opening; they may be sleeveless or have sleeves of any length and any type of pocket treatment." See *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE13/88 at 20 (Nov. 23, 1988).

The *Guidelines* state that "three quarter length or longer garments [are] commonly known as coats[.] * * * A coat is an outerwear garment which covers either the upper part

of the body or both the upper and lower parts of the body. It is normally worn over another garment, the presence of which is sufficient for the wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both. Garments in this category have a full or partial front opening, with or without a means of closure. Coats have sleeves of any length." See *Guidelines* at 5. However, within the "coat category", distinctions are made in the *Guidelines* for raincoats, water resistant coats, and shirt-jackets.

The *Guidelines* state that garments possessing at least three of the cited jacket features will be classified as jackets if the result is not unreasonable:

Shirt-jackets have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist * * *. The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

- (1) Fabric weight equal to or exceeding 10 ounces per square yard * * *.
- (2) A full or partial lining.
- (3) Pockets at or below the waist.
- (4) Back vents or pleats. Also side vents in combination with back seams.
- (5) Eisenhower styling.
- (6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
- (7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
- (8) Lapels.
- (9) Long sleeves without cuffs.
- (10) Elasticized or rib knit cuffs.
- (11) Drawstring, elastic or rib knit waistband.

See *Guidelines* at 5-6.

Upon review of the subject merchandise and upon application of the *Guidelines*, it is the determination of this office that these women's knit garments either do not possess the requisite number of *Guidelines* criteria to meet the standards of a jacket or the result would be unreasonable given the styling of the garment to resemble a long sweater.

The critical issue in this classification dispute hinges on the amount of consideration to be given to the length requirements established by the various textile resources cited above. It is the opinion of this office that the submitted samples are worn and used much like a sweater and have similar characteristics of a "traditional" sweater despite the long length. These knit garments are worn in the same manner as a sweater to give additional warmth. The appearance does not indicate use as a jacket, or windbreaker, to be worn outdoors on a day on which it is too cold and windy to wear a sweater or cardigan.

Furthermore, the fabric weight of these garments is not an absolute indicator of a garment's status for classification purposes but fabric weight does provide some indication as to a garment's suitability for different uses. Though it is feasible that the subject merchandise would be worn over a light weight shirt or layered for a stylish effect, it would not be worn over *all* other clothing for protection against the weather. In these samples, the knit fabric construction of the subject garments would not provide sufficient protection from the elements to the wearer when worn outside on cold days. In addition features such as a hood, faux fur collars or cuffs and long length, are not adequate proof that a garment is designed for use as a sweater or coat. In fact, today these features are commonly found on a variety of upper body garments as part of a new fashion trend for these products which the industry has termed "sweatercoats". Customs would not consider the subject garments to be sweater like if the garments contained a lining or heavier material as typically associated with a coat.

Heading 6110, HTSUSA, specifically provides for "similar articles" which have a likeness to the articles which are specifically named in the heading. Customs notes that the subject garments are similar to sweaters and meet all of the above cited definitions for sweaters with the exception of the length. Furthermore, given that the terms of Heading 6110 specifically provides for garments similar to sweaters, the ENs to heading 6110, HTSUSA, cannot be interpreted in such a manner to narrow the scope of the actual tariff heading.

Classification of other garments with a longer length has previously been considered by Customs and these garments have been consistently classified as sweater-like garments of

heading 6110, HTSUS. In HQ 951298, dated September 1, 1992; HQ 955084, dated March 23, 1994; HQ 954827, dated December 8, 1993; and HQ 955488, dated April 6, 1994, Customs considered garments which exceeded the length requirements stated in the EN, reaching to the mid thigh area or below, and classified the merchandise in heading 6110, HTSUS. In each of the above cited rulings Customs acknowledged that the garments had "sweater like characteristics" and provided warmth but not protection from the elements. Each of these garments also had a full frontal opening and button closure similar to a jacket or coat but were more akin to sweaters in "fabric, construction, styling and use" in the same manner as the merchandise at issue which is properly classified in heading 6110, HTSUS.

Furthermore, in past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), *aff'd* 786 F.2d 1144 (CAFC, April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. Upon review of current Fall fashion retail catalogs, Customs notes that the these sweatcoats are the current hot fashion item for Fall 2001. In several Fall retail catalogs, such as Victoria's Secret[®], J.Jill[®], Lord & Taylor[®], and Nordstrom[®], these garments are being referred to as "sweatcoats" and are worn over either lightweight shirts or layered with other sweaters to create a warmer effect. The advertising for these garments indicates that the garments are to be worn in much the same way as a sweater. Moreover, Customs notes that these garments are being sold in the same departments as "traditional" sweaters in retail stores this Fall.

Accordingly, we find that the subject samples were erroneously classified in the original Customs rulings which were issued to your company. As such, the subject samples are properly classified as sweaters or as similar to sweaters in heading 6110, HTSUS, as appropriate.

Holding:

The following rulings issued to your company are hereby revoked:

NY G84255, dated December 6, 2000
 NY G87851, dated April 11, 2001
 PD H80428, dated May 22, 2001
 PD H80421, dated May 25, 2001
 PD G89153, dated May 4, 2001
 PD G89979, dated May 2, 2001
 PD G89235, dated April 30, 2001
 PD G89028, dated April 17, 2001
 PD G89042, dated April 10, 2001
 PD G88353, dated April 3, 2001
 PD G89027, dated April 10, 2001
 PD G86955, dated February 22, 2001
 PD F85294, dated April 17, 2000
 PD H81162, dated June 5, 2001

Samples 1, 14, 15, and 16 are properly classified under subheading 6110.30.3055, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other: Women's or girls'." The general column one rate of duty is 32.7 percent *ad valorem*. The applicable textile restraint category is 639.

Samples 3, 6, 10, and 12 are properly classified under subheading 6110.20.2075, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other: Other: Other: Women's or girls'." The general column one rate of duty is 17.8 percent *ad valorem*. The applicable textile restraint category is 339.

Samples 5 and 9 are properly classified under subheading 6110.10.2080, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other: Other: Women's or girls'."

The general column one rate of duty is 16.3 percent *ad valorem*. The applicable textile restraint category is 438.

Samples 4, 7, 8, 11, and 13 are properly classified under subheading 6110.30.3020, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Sweaters: Women's." The general column one rate of duty is 32.7 percent *ad valorem*. The applicable textile restraint category 646.

Sample 2 is properly classified under subheading 6110.90.1060, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of other textiles materials: Containing 70 percent or more by weight of silk or silk waste: Other: Women's or girls'." The general column one rate of duty is 2.4 percent *ad valorem*. The applicable textile restraint category is 739.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Effect on Other Rulings:

The following rulings which deal with similar merchandise are revoked or modified as follows and will also be effective 60 days from date of publication of this ruling:

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD H81739	6/18/01	Modification	AMC	61801; 61802	6110.30.1520; 6110.30.1560
PD H80051	5/4/01	Revocation	AMC	EH 073016	6110.30.1560
PD H80053	4/26/01	Revocation	AMC	54623	6110.10.2080
PD G88792	4/11/01	Modification	AMC	FM2224; FM2228; FM2221	6110.10.2080; 6110.30.1520; 6110.10.2030
PD G88093	4/2/01	Revocation	AMC	5425	6110.10.2080
NY G80859	6/14/00	Revocation	Avon Products	PP204117	6110.30.3055
NY G87628	3/23/01	Modification	Grunfeld, Desiderio on behalf of Bernard Chaus	50419	6110.10.2080
PD H80504	5/22/01	Revocation	Fritz & Co. on behalf of B. Moss	576	6110.30.3055
PD G89151	4/19/01	Revocation	Total Port Clearance on behalf of Belford	4020	6110.10.2030
PD H80757	5/29/01	Modification	Grunfeld, Desiderio on behalf of By Design LLC	19047; 19008	6110.30.3055; 6110.30.3055
PD G89982	5/10/01	Revocation	C.F.L. Sportswear Trading, Inc.	0222258	6110.90.9042
PD G84780	12/27/00	Revocation	C.F.L. Sportswear Trading, Inc.	SW2017	6110.10.2030

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of garment(s)</i>	<i>Correct HTS/USA Classification</i>
PD F86133	4/25/00	Revocation	C.F.L. Sportswear Trading, Inc.	SW3411	6110.20.2020
PD H80691	6/4/01	Revocation	Dillard's Inc.	131S3095	6110.30.3020
PD G88184	3/29/01	Revocation	Donkenny Apparel	221679; 221680	6110.10.2080; 6110.10.2080
NY G89632	5/3/01	Revocation	Donna Karan	73310222VA	6110.10.2080
NY F89548	7/27/00	Revocation	Espirit de Corp	5435213	6110.10.2030
NY G88075	3/27/01	Revocation	Eddie Bauer, Inc.	010-2299/ 010-2300/ 010-2301	6110.10.2080
PD H81218	6/6/01	Modification	Eddie Bauer, Inc.	099-3729/ 009-3730/ 009-3731	6110.30.1560
PD H80425	5/25/01	Revocation	Prime Transport on behalf of E.M. Lawrence	134433	6110.90.9042
PD F84671	4/6/00	Revocation	Grunfeld Desiderio on behalf of 525 Made in America	0789	6110.20.2075
NY G80262	8/18/00	Revocation	The Gap on behalf of Banana Republic	814176	6110.90.9090
PD F83190	3/21/00	Revocation	The Gap on behalf of Banana Republic	814016	6110.10.2080
PD F85279	4/17/00	Revocation	The Gap, Inc	129906	6110.30.1520
NY G88190	4/9/01	Revocation	Great American Sweater Co.	1607J/30567	6110.30.3020
PD H80756	6/7/01	Modification	Heeny Brokers on behalf of Knits Cord	7260	6110.30.3055
PD H80024	5/10/01	Revocation	C-Air International on behalf of JDR Apparel	2301-2-14	6110.90.9042
PD G89178	4/25/01	Revocation	J.C. Penney Corporation	862-3334/ 234-3334/ 710-3334/ 981-3334	6110.30.3020
PD G88740	4/23/01	Revocation	Carmichael Brokers on behalf of John Paul Richard	M6107883; M1157109	6110.30.3055; 6110.30.3020
PD G87563	3/16/01	Revocation	The J. Jill Group	2361	6110.20.2075
PD G87576	3/12/01	Revocation	Mac & Jac	A 6169	6110.30.3055
NY G88949	4/16/01	Revocation	Grunfeld Desiderio on behalf of Mast Industries	3016B	6110.30.3055
NY G81395	9/26/00	Modification	Gemm Custom Brokers on behalf of Michael Simon	S10047	6110.30.3055
PD F84341	3/31/00	Revocation	Mark Group	BPK 9920	6110.30.1520

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD G89033	4/19/01	Revocation	Grunfeld, Desiderio on behalf of Mast Industries	96H1944	6110.30.1560
PD G85699	1/19/01	Revocation	Vandegrift Forwarding on behalf of Nautica Jeans	FSW 305	6110.10.2080
PD F85566	4/21/00	Revocation	MSAS Global on behalf of Newport News, Inc.	F00-61-015	6110.30.3055
NY G88749	5/12/01	Revocation	Sharretts, Paley on behalf of Polo Ralph Lauren	17165	6110.10.1020
PD G87734	4/11/01	Revocation	QVC, Inc.	A103107	6110.30.1560
NY G83575	11/8/00	Revocation	Spiegel Imports	16-6157s	6110.30.3055
PD G89715	5/7/01	Revocation	Spiegel Imports	38-5824s	6110.30.1560
NY G89021	4/26/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1141204	6110.30.1520
PD H80743	6/7/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1153510	6110.10.2080
PD H80488	5/8/01	Revocation	Target Corporation	T12847	6110.30.3055
PD G89468	5/2/01	Revocation	Wet Seal	WSS 7560; WSS 7547	6110.30.3020; 6110.30.3020
PD G89157	4/25/01	Revocation	Wet Seal	WS 7324D	6110.30.3055
PD G88797	4/12/01	Revocation	Wet Seal	WSS 7285	6110.30.3055

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 965183 mbg

Category: Classification

Tariff Nos. 6110.10.2080, 6110.20.2075, 6110.30.3055,
6110.30.1560, 6110.30.1520, 6110.30.1360,
6110.20.2020, 6110.30.3020, and 6110.90.9042

MR. JOHN IMBROGULIO
MS. ANGELA MASCO
NORDSTORM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Ave., Suite 1000
Seattle, WA 98101-1742

Re: Classification of long women's "sweatercoats"; Revocation and modification of prior Customs rulings.

DEAR MR. IMBROGULIO AND MS. MASCO:

Pursuant to your classification requests, Customs has previously issued Port Decision ("PD") Letters and New York Ruling Letters ("NY") to your company regarding the tariff classification of various long women's knitted "sweatercoats". These products were originally classified as women's knitted coats under heading 6102 of the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). Upon review, Customs has determined that the garments were erroneously classified. The correct classification for the garments should be under heading 6110, HTSUSA, based on classification as sweaters or garments similar to sweaters. Eleven rulings are hereby revoked and four rulings are modified for the reasons set forth below.

Facts:

Seventeen samples were submitted to Customs for review in the fifteen rulings under review.

Sample 1, style 27773, is a woman's garment constructed from 70 percent acrylic and 30 percent wool. The garment extends from the shoulders to below the knees. It features a V-neckline, long sleeves, and a full frontal opening with no means of closure. Style 27773 was originally the subject of NY G87180, dated March 9, 2001.

Sample 2, style 14276, is a woman's garment constructed from knitted fabric consisting of 62 percent acrylic, 18 percent polyester, 10 percent wool, 8 percent nylon and 2 percent spandex. The garment extends from the shoulders to the knee in length and features a fold down collar; long sleeves with ribbed cuffs, a full frontal opening with a zipper closure; and a ribbed bottom. Style 14276 was originally the subject of NY G86423, dated February 6, 2001.

Sample 3, style 11405, is a woman's knit garment constructed from 85 percent acrylic and 15 percent mohair. It features a hood, long sleeves with hemmed ends, a full frontal opening with two hook and loop closures, two pockets in the waist area and a hemmed bottom. The garment extends from the head and shoulders to below the mid-thigh in length. Style 11405 was originally the subject of NY G89855, dated April 26, 2001.

Sample 4, style 11755, is a woman's knit garment constructed of 100 percent cotton. The garment extends from the shoulder to the knee in length and features a crew neckline; long sleeves with rib knit cuffs; a full frontal opening with one button closure; and a rib knit bottom. Style 11755 was originally the subject of NY G82426, dated October 13, 2000.

Sample 5, style 18552, is a woman's garment constructed from 94 percent rayon and 6 percent nylon knit fabric. The garment extends from the shoulders to the knees in length and features a V-neckline, long sleeves, a full frontal opening with a three button closure, two belt loops, and a self fabric tie belt. Style 18552 was originally the subject of NY G85312, dated January 8, 2001.

Sample 6, style 52132F, is a woman's knit garment constructed from 70 percent acrylic and 30 percent wool knit fabric. The garment has a full frontal opening with a three button closure and extends below the mid thigh in length. Other features of the garment include

long sleeves, a collar, slits at the side and a self fabric tie belt. Style 52132F was originally the subject of PD G89362, dated April 6, 2001.

Sample 7, style 11408M, is a woman's knit garment constructed of 100 percent cotton fabric. The fabric is constructed with less than nine stitches per two centimeters measured in the horizontal direction. The garment extends to the knee of the wearer and features long sleeves with hemmed cuffs, a hood, a full frontal opening with five button closures, a self fabric belt, and a straight bottom. Style 11408M was originally the subject of PD G86918, dated February 15, 2001.

Sample 8, style 3BW52901, is a woman's knit garment of 100 percent wool. The fabric measures more than nine stitches per two centimeters counted in the horizontal direction. The garment features a full frontal opening secured by three button closures. The coat has long sleeves, a notched collar, and two front pockets located below the waist. The rear of the garment features an eight inch slit at the bottom and a straight hemmed bottom. Style 3BW52901 was originally the subject of PD G87392, dated March 28, 2001.

Sample 9, style 11408, is a woman's knit garment of 100 percent cotton. It features a six button full frontal opening, a self fabric belt, long sleeves, and a hood. The garment extends to the knee in length and measures 7 stitches per centimeter horizontally and 6 stitches per centimeter vertically. Style 11408 was originally the subject of PD G87881, dated March 7, 2001.

Sample 10, style 11319, is a woman knit garment constructed of 58 percent cotton and 48 percent acrylic. The garment features a five button full frontal opening, long sleeves, and a V-neckline. It extends past the mid-thigh and measures 4 stitches per cm horizontally and 6 stitches per centimeter vertically. Style 11319 was originally the subject of PD G87881, dated March 7, 2001.

Sample 11, style 15088, is a woman's knit garment constructed of 50 percent mohair and 50 percent acrylic. The garment extends from the shoulders to below the mid-thigh in length. The garment features a V-neckline, long sleeves, and a full frontal opening with three button closures. Style 15088 was originally the subject of NY G80138, dated August 24, 2000.

Sample 12, style 17999, is a woman's knit garment constructed of 52 percent cotton and 48 percent acrylic. The garment has a 1 x 1 rib knit and extends from the shoulders to below the mid-thigh in length. Other features are a V-neckline, long sleeves, a full frontal opening with three buttons, and two front patch pockets in the waist area. Style 17999 was originally the subject of NY G80136, dated August 18, 2000.

Sample 13, style 15074, is a woman's knit garment constructed of 55 percent ramie, 20 percent acrylic, 15 percent wool, and 10 percent nylon. It has a 1 x 1 rib knit and extends from the shoulders to below the mid-thigh in length. The garment features a notched lapel collar, long sleeves, and a full frontal opening with five button closures. Style 15074 was originally the subject of NY G80136, dated August 18, 2000.

Sample 14, style 15087, is a woman's knit garment constructed of 50 percent mohair, 30 percent nylon, and 20 percent acrylic. The garment extends from the shoulders to the knee in length and features a V-neckline, long sleeves with fringed cuffs, and a full frontal opening with three hook and eye closures, belt loops, a self fabric belt at the waist, and a fringed bottom. Style 15087 was originally the subject of NY G80130, dated August 7, 2001.

Sample 15, style 11282, is a woman's knit garment constructed of 55 percent ramie, 20 percent acrylic, 15 percent wool, and 10 percent nylon fabric. The garment features a funnel neck; a full frontal opening with zipper closure; two pockets at the waist; long sleeves; and extends from the shoulders to the knee in length. Style 11282 was originally the subject of PD G80137, dated August 3, 2000.

Sample 16, style 14226, is a woman's knit garment constructed from 37 percent wool, 37 percent acrylic, and 26 percent nylon fabric. The garment extends from the shoulder to below the mid-thigh in length and features a V-neckline, long sleeves, and a full frontal opening with a five button closure. The neckline, sleeves, placket and bottom of the garment are finished with a ribbed fabric. Style 14226 was originally the subject of NY F86148, dated May 5, 2000.

Sample 17, style 11030, is a woman's knit garment of 100 percent cotton. The garment extends from the neck to the knees in length and is constructed of 13 stitches per 2 centimeters measured in the horizontal direction. Other features of the garment are a hood without tightening, a full frontal opening with 10 button closures, two pockets below the

waist, eight inch side vents, long sleeves and a straight bottom. Style 11030 was originally the subject of PD F82775, dated March 7, 2000.

Issue:

Whether the subject knit garments are more properly classified as jackets or coats in heading 6102, HTSUS, or as sweaters or garments similar to sweaters in heading 6110, HTSUS?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the Harmonized System at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The issue in the instant case is whether the submitted samples are properly classifiable as women's sweaters or jackets or coats. There are two possible tariff classifications for the subject garments, heading 6102, HTSUS, which provides for, among other things, women's knit jackets and coats, and heading 6110, HTSUS, which provides for, among other things, women's knit sweaters and similar garments. Garments classified as sweaters or similar to sweaters of heading 6110, HTSUS, may serve a dual purpose in that they may be worn either indoors or outdoors. The purpose of jackets or coats of heading 6102 on the other hand, is to provide the wearer protection against the elements over other outerwear, and thus they are worn principally outdoors. The determinative issue, therefore, is the manner in which these garments are primarily worn.

The Explanatory Notes (EN) to heading 6101, which apply *mutatis mutandis* to the articles of heading 6102, HTSUSA, state:

[T]his heading covers * * * [garments for women or girls], characterised by the fact that that they are *generally worn over all other clothing for protection against the weather*.

(emphasis added).

The EN to heading 6110, state:

This heading covers a category of knitted or crocheted articles, without distinction between male or female wear, *designed to cover the upper parts of the body* (jerseys, pullovers, cardigans, waistcoats and similar articles).

(emphasis added).

A strict application of the above ENs to the subject merchandise creates an obvious conflict. The long length of the garments would preclude classification within heading 6110 which specifically states that garments therein are designed for the upper body. Yet, the ENs for heading 6102 state that garments within the scope of that heading are designed to be worn for protection against the elements. The subject garments could not provide protection against the elements due to the lightweight yarns with which they were knit and the styling which is intended to satisfy a current fashion trend rather than provide extensive protection from the weather.

In a recent informed compliance publication, Customs provided basic definitions of textile terms which are commonly utilized in the HTSUS and by the trade community. These definitions are not intended to be definitive but rather to provide a basic guideline for classification purposes. In the informed compliance publication, sweaters, coats and jackets are defined as:

Sweaters (6110, 6111)—are knit garments that cover the body *from the neck or shoulders to the waist or below (as far as the mid-thigh or slightly below the mid-thigh)*. Sweaters may have a type of pocket treatment or *any type of collar treatment*, including a hood, or no collar, or any type of neckline. They may be pullover style or have a full partial front or back opening. They may be sleeveless or have sleeves of any length. Those sweaters provided for at the statistical level (9th and 10th digit of the tariff number) have a stitch count of 9 or fewer stitches per 2 centimeters measured on the outer surface of the fabric, in the direction in which the stitches are formed. Also included in these statistical provisions are garments, known as sweaters, where,

due to their construction (e.g., open-work raschel knitting), the stitches on the outer surface cannot be counted in the direction in which the stitches are formed. Garments with a full-front opening but which lack the proper stitch count for classification as a sweater may be considered "sweater-like" cardigans of heading 6110.

This term excludes garments that have a sherpa lining or a heavyweight fiberfill lining (including quilted lining), which are used to provide extra warmth to the wearer. Such garments, whether or not they have a sweater stitch count, are classified in heading 6101 or 6102. This term also excludes cardigans that are tailored. Such garments are classified in heading 6103 or 6104.

(Emphasis added.)

Jackets—See "Suit-type jackets" and "Anoraks, windbreakers and similar articles."

Suit-type jackets—(6103, 6104, 6203, 6204)—are garments generally designed for wear over a lighter outer garment, on business or social occasions when some degree of formality is required. They are tailored, have a full frontal opening without a closure or with a closure other than a slide fastener (zipper), and have sleeves (of any length). They have three or more panels (excluding sleeves), of which two are at the front, sewn together lengthwise. They do not extend below the mid-thigh and are not for wear over another coat, jacket or blazer.

Anoraks, windbreakers and similar articles—(6101, 6102, 6113, 6201, 6202, 6210)—is a group of garments which includes:

Jackets, which are garments designed to be worn over another garment for protection against the elements. Jackets cover the upper body from the neck area to the waist area, but are generally less than mid thigh length. They normally have a full front opening, although some jackets may have only a partial front opening. Jackets usually have long sleeves. Knit jackets (due to the particular character of knit fabric) generally have tightening elements at the cuffs and at the waist or bottom of the garment, although children's garments or garments made of heavier material might not need these tightening elements. *This term excludes knit garments that fail to qualify as jackets because they do not provide sufficient protection against the elements. Such garments, if they have full-front openings, may be considered cardigans of heading 6110 (other).*

(Emphasis added.)

Coats—See "Overcoats, carcoats, capes, cloaks and similar garments"

Overcoats, carcoats, capes, cloaks and similar garments (6101, 6102, 6201, 6202)—is a group of outerwear garments which cover both the upper and lower parts of the body, and which are normally worn over other garments for warmth and protection from the weather. Overcoats and carcoats are thigh length or longer, with sleeves, with or without a means of closure, and with a full-front opening.

See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS* 34 Cust. B. & Dec. 52, 153 (Dec. 27, 2000).

Furthermore, in circumstances such as these, where the identity of a garment is ambiguous for classification purposes, reference to *The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, ("Guidelines") is appropriate. The *Guidelines* were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles.

Regarding the classification of sweaters, the *Guidelines* state that "garments commercially known as cardigans, sweaters, * * * cover the upper body from the neck or shoulders to the waist or below (as far as the mid-thigh area.)" Then further state, "Sweaters * * * may have a collar treatment of any type, including a hood, or no collar, and any type of neckline; they may be pullover style or have full or partial front or back opening; they may be sleeveless or have sleeves of any length and any type of pocket treatment." See *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88 at 20 (Nov. 23, 1988).

The *Guidelines* state that "three quarter length or longer garments [are] commonly known as coats[.] * * * A coat is an outerwear garment which covers either the upper part of the body or both the upper and lower parts of the body. It is normally worn over another garment, the presence of which is sufficient for the wearer to be considered modestly and

conventionally dressed for appearance in public, either indoors or outdoors or both. Garments in this category have a full or partial front opening, with or without a means of closure. Coats have sleeves of any length." See *Guidelines* at 5. However, within the "coat category", distinctions are made in the *Guidelines* for raincoats, water resistant coats, and shirt-jackets.

The *Guidelines* state that garments possessing at least three of the cited jacket features will be classified as jackets if the result is not unreasonable:

Shirt-jackets have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist * * *. The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

- (1) Fabric weight equal to or exceeding 10 ounces per square yard * * *.
- (2) A full or partial lining.
- (3) Pockets at or below the waist.
- (4) Back vents or pleats. Also side vents in combination with back seams.
- (5) Eisenhower styling.
- (6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
- (7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
- (8) Lapels.
- (9) Long sleeves without cuffs.
- (10) Elasticized or rib knit cuffs.
- (11) Drawstring, elastic or rib knit waistband.

See *Guidelines* at 5-6.

Upon review of the subject merchandise and upon application of the *Guidelines*, it is the determination of this office that these women's knit garments either do not possess the requisite number of *Guidelines* criteria to meet the standards of a jacket or the result would be unreasonable given the styling of the garment to resemble a long sweater.

The critical issue in this classification dispute hinges on the amount of consideration to be given to the length requirements established by the various textile resources cited above. It is the opinion of this office that the submitted samples are worn and used much like a sweater and have similar characteristics of a "traditional" sweater despite the long length. These knit garments are worn in the same manner as a sweater to give additional warmth. The appearance does not indicate use as a jacket, or windbreaker, to be worn outdoors on a day on which it is too cold and windy to wear a sweater or cardigan.

Furthermore, the fabric weight of these garments is not an absolute indicator of a garment's status for classification purposes but fabric weight does provide some indication as to a garment's suitability for different uses. Though it is feasible that the subject merchandise would be worn over a light weight shirt or layered for a stylish effect, it would not be worn over *all* other clothing for protection against the weather. In these samples, the knit fabric construction of the subject garments would not provide sufficient protection from the elements to the wearer when worn outside on cold days. In addition features such as a hood, faux fur collar or cuffs, and long length are not adequate proof that a garment is designed for use as outerwear. In fact, today these features are commonly found on a variety of upper body garments as part of a new fashion trend for these products which the industry has termed "sweatercoats". Customs would not consider the subject garments to be sweater like if the garments contained a lining or heavier material as typically associated with a coat.

Heading 6110, HTSUSA, specifically provides for "similar articles" which have a likeness to the articles which are specifically named in the heading. Customs notes that the subject garment is similar to a sweater and meets all of the above cited definitions for sweaters with the exception of the length. Furthermore, given that the terms of Heading 6110 specifically provides for garments similar to sweaters, the ENs to heading 6110, HTSUSA, cannot be interpreted in such a manner to narrow the scope of the actual tariff heading.

Classification of other garments with a longer length has previously been considered by Customs and these garments have been consistently classified as sweater-like garments of heading 6110, HTSUS. In HQ 951298, dated September 1, 1992; HQ 955084, dated March 23, 1994; HQ 954827, dated December 8, 1993; and HQ 955488, dated April 6, 1994, Cus-

toms considered garments which exceeded the length requirements stated in the EN, reaching to the mid thigh area or below, and classified the merchandise in heading 6110, HTSUS. In each of the above cited rulings Customs acknowledged that the garments had "sweater like characteristics" and provided warmth but not protection from the elements. Each of these garments also had a full frontal opening and button closure similar to a jacket or coat but were more akin to sweaters in "fabric, construction, styling and use" in the same manner as the merchandise at issue which is properly classified in heading 6110, HTSUS.

Furthermore, in past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), *aff'd* 786 F.2d 1144 (CAFC, April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. Upon review of current Fall fashion retail catalogs, Customs notes that these sweaterecoats are the current hot fashion item for Fall 2001. In several Fall retail catalogs, such as Victoria's Secret®, J.Jill®, Lord & Taylor®, and Nordstrom®, these garments are being referred to as "sweatercoats" and are worn over either lightweight shirts or layered with other sweaters to create a warmer effect. The advertising for these garments indicates that the garments are to be worn in much the same way as a sweater. Moreover, Customs notes that these garments are being sold in the same departments as "traditional" sweaters in retail stores this Fall.

Accordingly, we find that the subject merchandise was erroneously classified in the original Customs rulings which were issued to your company. As such, the subject merchandise is properly classified as sweaters or as similar to sweaters in heading 6110, HTSUS, as appropriate.

Holding:

The following rulings are hereby revoked:

NY G87180, dated March 9, 2001
NY G86423, dated February 6, 2001
NY G89855, dated April 26, 2001
NY G82426, dated October 13, 2000
NY G85312, dated January 8, 2001
PD G89362, dated April 6, 2001
PD G87881, dated March 7, 2001
NY G80138, dated August 24, 2000
NY G80136, dated August 18, 2000
NY F86148, dated May 5, 2000
NY G80130, dated August 7, 2000

The following rulings are hereby modified:

PD G80137, dated August 3, 2000
PD G87392, dated March 28, 2001
PD G86918, dated February 15, 2001
PD F82775, dated March 7, 2000

Samples 1 and 6 are properly classified under subheading 6110.30.1560, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Containing 23 percent or more by weight of wool or fine animal hair: Other: Women's or girls'." The general column one rate of duty is 17 percent *ad valorem*. The applicable textile restraint category is 438.

Sample 2 is properly classified under subheading 6110.30.3055, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other: Women's or girls'." The general column one rate of duty is 32.7 percent *ad valorem*. The applicable textile restraint category is 639.

Samples 3 and 5 are properly classified under subheading 6110.30.3020 HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other: Sweaters:

Women's." The general column one rate of duty is 32.7 percent *ad valorem*. The applicable textile restraint category is 646.

Sample 13 and 15 are properly classified under subheading 6110.90.9042, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of other textile materials: Other: Sweaters for women or girls: Other: Other: Other." The general column one rate of duty is 6 percent *ad valorem*. The applicable textile restraint category is 845.

Samples 4, 7 and 10 are properly classified under subheading 6110.20.2020, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other: Other: Sweaters: Women's." The general column one rate of duty is 17.8 percent *ad valorem*. The applicable textile restraint category is 345.

Sample 11 and 14 are properly classified under subheading 6110.30.1560, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Containing 23 percent or more by weight of wool or fine animal hair: Other: Women's or girls'." The general column one rate of duty is 17 percent *ad valorem*. The applicable textile restraint category is 438.

Sample 16 is properly classified under subheading 6110.30.1520, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Containing 23 percent or more by weight of wool or fine animal hair: Sweaters: Women's or girls'." The general column one rate of duty is 17 percent *ad valorem*. The applicable textile restraint category is 446.

Samples 9, 12 and 17 are properly classified under subheading 6110.20.2075, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other: Other: Other: Women's or girls'." The general column one rate of duty is 17.8 percent *ad valorem*. The applicable textile restraint category is 339.

Sample 8 is properly classified under subheading 6110.10.2080, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other: Other: Women's or girls'." The general column one rate of duty is 16.3 percent *ad valorem*. The applicable textile restraint category is 438.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Effect on Other Rulings:

The following rulings which deal with similar merchandise are revoked or modified as follows and will also be effective 60 days from date of publication of this ruling:

Ruling Number	Issue Date	Type of Customs Action	To Whom Addressed	Style # of garment(s)	Correct HTSUSA Classification
PD H81739	6/18/01	Modification	AMC	61801; 61802	6110.30.1520; 6110.30.1560
PD H80051	5/4/01	Revocation	AMC	EH 073016	6110.30.1560
PD H80053	4/26/01	Revocation	AMC	54623	6110.10.2080
PD G88792	4/11/01	Modification	AMC	FM2224; FM2226; FM2221	6110.10.2080; 6110.30.1520; 6110.10.2030
PD G88093	4/2/01	Revocation	AMC	5425	6110.10.2080

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of garment(s)</i>	<i>Correct HTSUSA Classification</i>
NY G80859	6/14/00	Revocation	Avon Products	PP204117	6110.30.3055
NY G87628	3/23/01	Modification	Grunfeld, Desiderio on behalf of Bernard Chaus	50419	6110.10.2080
PD H80504	5/22/01	Revocation	Fritz & Co. on behalf of B. Moss	576	6110.30.3055
PD G89151	4/19/01	Revocation	Total Port Clearance on behalf of Belford	4020	6110.10.2030
PD H80757	5/29/01	Modification	Grunfeld, Desiderio on behalf of By Design LLC	19047; 19008	6110.30.3055; 6110.30.3055
PD G89982	5/10/01	Revocation	C.F.L. Sportswear Trading, Inc.	0222258	6110.90.9042
PD G84780	12/27/00	Revocation	C.F.L. Sportswear Trading, Inc.	SW2017	6110.10.2030
PD F86133	4/25/00	Revocation	C.F.L. Sportswear Trading, Inc.	SW3411	6110.20.2020
PD H80691	6/4/01	Revocation	Dillard's Inc.	131S3095	6110.30.3020
PD G88184	3/29/01	Revocation	Donkenny Apparel	221679; 221680	6110.10.2080; 6110.10.2080
NY G89632	5/3/01	Revocation	Donna Karan	73310222VA	6110.10.2080
NY F89548	7/27/00	Revocation	Espirit de Corp	5435213	6110.10.2030
NY G88075	3/27/01	Revocation	Eddie Bauer, Inc.	010-2299/ 010-2300/ 010-2301	6110.10.2080
PD H81218	6/6/01	Modification	Eddie Bauer, Inc.	099-3729/ 009-3730/ 009-3731	6110.30.1560
PD H80425	5/25/01	Revocation	Prime Transport on behalf of E.M. Lawrence	134433	6110.90.9042
PD F84671	4/6/00	Revocation	Grunfeld Desiderio on behalf of 525 Made in America	0789	6110.20.2075
NY G80262	8/18/00	Revocation	The Gap on behalf of Banana Republic	814176	6110.90.9090
PD F83190	3/21/00	Revocation	The Gap on behalf of Banana Republic	814016	6110.10.2080
PD F85279	4/17/00	Revocation	The Gap, Inc	129906	6110.30.1520
NY G88190	4/9/01	Revocation	Great American Sweater Co.	1607J/30567	6110.30.3020
PD H80756	6/7/01	Modification	Hecny Brokers on behalf of Knits Cord	7260	6110.30.3055
PD H80024	5/10/01	Revocation	C-Air International on behalf of JDR Apparel	2301-2-14	6110.90.9042

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD G89178	4/25/01	Revocation	J.C. Penney Corporation	862-3334/ 234-3334/ 710-3334/ 981-3334	6110.30.3020
PD G88740	4/23/01	Revocation	Carmichael Brokers on behalf of John Paul Richard	M6107883; M1157109	6110.30.3055; 6110.30.3020
PD G87563	3/16/01	Revocation	The J. Jill Group	2361	6110.20.2075
PD G87576	3/12/01	Revocation	Mac & Jac	A 6169	6110.30.3055
NY G88949	4/16/01	Revocation	Grunfeld Desiderio on behalf of Mast Industries	3016B	6110.30.3055
NY G81395	9/26/00	Modification	Gemm Custom Brokers on behalf of Michael Simon	S10047	6110.30.3055
PD F84341	3/31/00	Revocation	Mark Group	BPK 9920	6110.30.1520
PD G89033	4/19/01	Revocation	Grunfeld, Desiderio on behalf of Mast Industries	96H1944	6110.30.1560
PD G85699	1/19/01	Revocation	Vandegrift Forwarding on behalf of Nautica Jeans	FSW 305	6110.10.2080
PD F85566	4/21/00	Revocation	MSAS Global on behalf of Newport News, Inc.	F00-61-015	6110.30.3055
NY G88749	5/12/01	Revocation	Sharretts, Paley on behalf of Polo Ralph Lauren	17165	6110.10.1020
PD G87734	4/11/01	Revocation	QVC, Inc.	A103107	6110.30.1560
NY G83575	11/8/00	Revocation	Spiegel Imports	16-6157s	6110.30.3055
PD G89715	5/7/01	Revocation	Spiegel Imports	38-5824s	6110.30.1560
NY G89021	4/26/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1141204	6110.30.1520
PD H80743	6/7/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1153510	6110.10.2080
PD H80488	5/8/01	Revocation	Target Corporation	T12847	6110.30.3055
PD G89468	5/2/01	Revocation	Wet Seal	WSS 7560; WSS 7547	6110.30.3020; 6110.30.3020
PD G89157	4/25/01	Revocation	Wet Seal	WS 7324D	6110.30.3055
PD G88797	4/12/01	Revocation	Wet Seal	WSS 7285	6110.30.3055

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:TE 965184 mbg

Category: Classification

Tariff No. 6110.10.2080, 6110.20.2020,

6110.30.1520, and 6110.10.2030

MR. DONALD S. SIMPSON
MR. JAMES J. KELLY
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: Classification of a long women's "sweatercoat"; Revocation and modification of prior Customs rulings.

DEAR MR. SIMPSON AND MR. KELLY:

Pursuant to your classification requests, Customs has previously issued Port Decision ("PD") Letters and New York Ruling Letters ("NY") to your company, Barthco Trade Consultants, Inc. on behalf of Jones Apparel Group USA, regarding the tariff classification of various long women's knitted "sweatercoats". These products were originally classified as women's knitted coats under heading 6102 of the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). Upon review, Customs has determined that the garments were erroneously classified. The correct classification for the garments should be under heading 6110, HTSUSA, based on classification as sweaters or as garments similar to sweaters. Seven rulings are hereby revoked and three rulings are modified for the reasons set forth below.

Facts:

Thirteen samples were submitted to Customs for review in the ten rulings under review. You have stated that all of the submitted samples will be manufactured in Hong Kong except for style 13JBDF508 which will be manufactured in Thailand.

Sample 1, style 13JBDF508, is a women's garment constructed of 100 percent lambs wool. The garment extends from the shoulders to the knees in length and features a V-neckline; long tubular hemmed sleeves; a full frontal opening with a self fabric tie belt closure; two belt loops; and a tubular hemmed bottom. Style 13JBDF508 was originally the subject of NY G86050, dated January 26, 2001.

Sample 2, style 321690218, is a women's knit garment composed of 70 percent wool and 30 percent polyester. The garment extends below the knee in length and features a full frontal opening secured by six button closures. The garment has a shawl collar and long sleeves with turned back cuffs. The garment also has a straight bottom; two front pockets located below the waist; and a self fabric tie belt which is supported to the garment by two belt loops. Style 321690218 was originally the subject of PD H80571, dated May 21, 2001.

Sample 3, style 351163998, is a women's knit garment constructed of 100 percent merino wool fabric. The garment extends below the knee in length and features a full frontal opening without closures. The garment has a shawl collar and long sleeves with turned back cuffs. The garment also has a straight bottom and two front pockets located below the waist. Style 351163998 was originally the subject of PD H80571, dated May 21, 2001.

Sample 4, style 353B13358, is a women's garment constructed of 100 percent merino wool knitted fabric. The garment extends from the shoulders to the ankle in length and features a V-neckline; a full frontal opening with ten button closures; long sleeves; two large patch pockets below the waist; and a straight edge bottom. Style 353B13358 was originally the subject of PD H80420, dated May 10, 2001.

Sample 5, style 125e3408, is a women's knit garment constructed of 70 percent acrylic and 30 percent wool fabric. The garment has a full frontal opening with seven button closures and extends below the knee in length. Other features include long sleeves, two patch pockets and a hood. Style 125e3408 was originally the subject of PD G89023, dated April 19, 2001.

Sample 6, style 11TD14178, is a women's 100 percent cotton knit garment. The garment extends from the shoulders to below the mid-calf in length and features a hood, a full

frontal opening with eight button closure and long sleeves with folded cuffs. Style 11TD14178 was originally the subject of PD G88233, dated March 22, 2001.

Sample 7, style 11TT24188, is a women's knitted garment of 100 percent lambswool. The garment extends to mid calf in length and features a hood, long sleeves and a belt. Style 11TT24188 was originally the subject of PD G86813, dated March 12, 2001.

Sample 8, style 153A52938, is a women's knit garment constructed from 100 percent merino boiled wool fabric. The surface of the fabric measures more than 9 stitches per 2 centimeters measured in the horizontal direction. The garment is knee length and features a shawl collar, long sleeves with fold over cuffs, a full frontal opening with no means of closure, patch pockets at the waist and a hemmed bottom. Style 153A52938 was originally the subject of PD G86712, dated February 14, 2001, and amended on February 28, 2001 by PD G86712.

Sample 9, style 119970695, is a women's knit garment constructed of 100 percent boiled wool fabric. The garment is ankle length and has a full frontal opening with a single hook closure. Other features include a shawl collar, long sleeves with roll up cuffs and two front pockets. Style 119970695 was originally the subject of PD G86510, dated February 8, 2001.

Sample 10, style C21500538, is a women's knit garment constructed from 100 percent wool fabric with less than 9 stitches per 2 centimeters measured in the horizontal direction. The garment features a mandarin collar, a full frontal opening with six button closures, two front patch pockets at the hip, long hemmed sleeves and a hemmed bottom. Style C21500538 was originally the subject of PD F83090, dated February 23, 2000.

Sample 11, style C1CN16228, is a women's knit garment constructed of 100 percent wool. The garment is hand knit with stripes and extends below the mid-thigh in length. The garment features long sleeves with a loose fitting rib ending and a shawl collar that extends to the rib hemmed bottom. Style C1CN16228 was originally the subject of PD F83556, dated April 6, 2000.

Sample 12, style 121220438, is a women's knit garment constructed of 100 percent merino wool. The garment extends from the shoulders to below the knees in length and features a mandarin collar; long hemmed sleeves; a full frontal opening with seven button closures; two front inset vertical pockets below the waist; two belt loops; a self fabric tie belt; and a hemmed bottom. Style 121220438 was originally the subject of NY G85916, dated March 2, 2001.

Sample 13, style 121370278, is a women's knit garment constructed of 100 percent merino wool. The garment extends from the shoulders to below the knees in length and features a round neckline; long hemmed sleeves; a full frontal opening with seven snap closures; two belt loops; a fake suede tie belt; and a hemmed bottom. Style 121370278 was originally the subject of NY G85916, dated March 2, 2001.

Issue:

Whether the subject knit garments are more properly classified as jackets or coats in heading 6102, HTSUS, or as sweaters or garments similar to sweaters in heading 6110, HTSUS?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRI's"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the Harmonized System at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The issue in the instant case is whether the submitted samples are properly classifiable as women's sweaters or jackets or coats. There are two possible tariff classifications for the subject garments, heading 6102, HTSUS, which provides for, among other things, women's knit jackets and coats, and heading 6110, HTSUS, which provides for, among other things, women's knit sweaters and similar garments. Garments classified as sweaters or as similar to sweaters of heading 6110, HTSUS, may serve a dual purpose in that they may be worn either indoors or outdoors. The purpose of jackets or coats of heading 6102 on the other hand, is to provide the wearer protection against the elements over oth-

er outerwear, and thus they are worn principally outdoors. The determinative issue, therefore, is the manner in which these garments are principally worn.

The Explanatory Notes (EN) to heading 6101, which apply *mutatis mutandis* to the articles of heading 6102, HTSUSA, state:

[T]his heading covers * * * [garments for women or girls], characterised by the fact that that they are generally worn over all other clothing for protection against the weather.

(emphasis added).

The EN to heading 6110, state:

This heading covers a category of knitted or crocheted articles, without distinction between male or female wear, *designed to cover the upper parts of the body* (jerseys, pullovers, cardigans, waistcoats and similar articles).

(emphasis added).

A strict application of the above ENs to the subject merchandise creates an obvious conflict. The long length of the garments would preclude classification within heading 6110 which specifically states that garments therein are designed for the upper body. Yet, the ENs for heading 6102 state that garments within the scope of that heading are designed to be worn for protection against the elements. The subject garments could not provide protection against the elements due to the lightweight yarns with which they were knit and the styling which is intended to satisfy a current fashion trend rather than provide extensive protection from the weather.

In a recent informed compliance publication, Customs provided basic definitions of textile terms which are commonly utilized in the HTSUS and by the trade community. These definitions are not intended to be definitive but rather to provide a basic guideline for classification purposes. In the informed compliance publication, sweaters, coats and jackets are defined as:

Sweaters (6110, 6111)—are knit garments that cover the body from the neck or shoulders to the waist or below (as far as the mid-thigh or slightly below the mid-thigh). Sweaters may have a type of pocket treatment or any type of collar treatment, including a hood, or no collar, or any type of neckline. They may be pullover style or have a full partial front or back opening. They may be sleeveless or have sleeves of any length. Those sweaters provided for at the statistical level (9th and 10th digit of the tariff number) have a stitch count of 9 or fewer stitches per 2 centimeters measured on the outer surface of the fabric, in the direction in which the stitches are formed. Also included in these statistical provisions are garments, known as sweaters, where, due to their construction (e.g., open-work raschel knitting), the stitches on the outer surface cannot be counted in the direction in which the stitches are formed. Garments with a full-front opening but which lack the proper stitch count for classification as a sweater may be considered "sweater-like" cardigans of heading 6110.

This term excludes garments that have a sherpa lining or a heavyweight fiberfill lining (including quilted lining), which are used to provide extra warmth to the wearer. Such garments, whether or not they have a sweater stitch-count, are classified in heading 6101 or 6102. This term also excludes cardigans that are tailored. Such garments are classified in heading 6103 or 6104.

(Emphasis added.)

Jackets—See "Suit-type jackets" and "Anoraks, windbreakers and similar articles."

Suit-type jackets—(6103, 6104, 6203, 6204)—are garments generally designed for wear over a lighter outer garment, on business or social occasions when some degree of formality is required. They are tailored, have a full frontal opening without a closure or with a closure other than a slide fastener (zipper), and have sleeves (of any length). They have three or more panels (excluding sleeves), of which two are at the front, sewn together lengthwise. They do not extend below the mid-thigh and are not for wear over another coat, jacket or blazer.

Anoraks, windbreakers and similar articles—(6101, 6102, 6113, 6201, 6202, 6210)—is a group of garments which includes:

Jackets, which are garments designed to be worn over another garment for protection against the elements. Jackets cover the upper body from the neck area to the waist area, but are generally less than mid thigh length. They normally have a full front opening, although some jackets may have only a partial front opening. Jackets usually have long sleeves. Knit jackets (due to the particular character of knit fabric) generally have tightening elements at the cuffs and at the waist or bottom of the gar-

ment, although children's garments or garments made of heavier material might not need these tightening elements. *This term excludes knit garments that fail to qualify as jackets because they do not provide sufficient protection against the elements. Such garments, if they have full-front openings, may be considered cardigans of heading 6110 (other).*

(Emphasis added.)

Coats—See "Overcoats, carcoats, capes, cloaks and similar garments"

Overcoats, carcoats, capes, cloaks and similar garments (6101, 6102, 6201, 6202)—is a group of outerwear garments which cover both the upper and lower parts of the body, and which are normally worn over other garments for warmth and protection from the weather. Overcoats and carcoats are thigh length or longer, with sleeves, with or without a means of closure, and with a full-front opening.

See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS* 34 Cust. B. & Dec. 52, 153 (Dec. 27, 2000).

Furthermore, in circumstances such as these, where the identity of a garment is ambiguous for classification purposes, reference to *The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, ("Guidelines") is appropriate. The *Guidelines* were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles.

Regarding the classification of sweaters, the *Guidelines* state that "garments commercially known as cardigans, sweaters, * * * cover the upper body from the neck or shoulders to the waist or below (as far as the mid-thigh area.)" Then further state, "Sweaters * * * may have a collar treatment of any type, including a hood, or no collar, and any type of neckline; they may be pullover style or have full or partial front or back opening; they may be sleeveless or have sleeves of any length and any type of pocket treatment." See *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE13/88 at 20 (Nov. 23, 1988).

The *Guidelines* state that "three quarter length or longer garments [are] commonly known as coats[.]" * * * A coat is an outerwear garment which covers either the upper part of the body or both the upper and lower parts of the body. It is normally worn over another garment, the presence of which is sufficient for the wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both. Garments in this category have a full or partial front opening, with or without a means of closure. Coats have sleeves of any length." See *Guidelines* at 5. However, within the "coat category", distinctions are made in the *Guidelines* for raincoats, water resistant coats, and shirt-jackets.

The *Guidelines* state that garments possessing at least three of the cited jacket features will be classified as jackets if the result is not unreasonable:

Shirt-jackets have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist * * *. The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

- (1) Fabric weight equal to or exceeding 10 ounces per square yard * * *.
- (2) A full or partial lining.
- (3) Pockets at or below the waist.
- (4) Back vents or pleats. Also side vents in combination with back seams.
- (5) Eisenhower styling.
- (6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
- (7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
- (8) Lapels.
- (9) Long sleeves without cuffs.
- (10) Elasticized or rib knit cuffs.
- (11) Drawstring, elastic or rib knit waistband.

See *Guidelines* at 5-6.

Upon review of the subject merchandise and upon application of the *Guidelines*, it is the determination of this office that these women's knit garments either do not possess the requisite number of *Guidelines* criteria to meet the standards of a jacket or the result would be unreasonable given the styling of the garment to resemble a long sweater.

The critical issue in this classification dispute hinges on the amount of consideration to be given to the length requirements established by the various textile resources cited above. It is the opinion of this office that the submitted samples are worn and used much like a sweater and have similar characteristics of a "traditional" sweater despite the long length. These knit garments are worn in the same manner as a sweater to give additional warmth. The appearance does not indicate use as a jacket, or windbreaker, to be worn outdoors on a day on which it is too cold and windy to wear a sweater or cardigan.

Furthermore, the fabric weight of these garments is not an absolute indicator of a garment's status for classification purposes but fabric weight does provide some indication as to a garment's suitability for different uses. Though it is feasible that the subject merchandise would be worn over a light weight shirt or layered for a stylish effect, it would not be worn over *all* other clothing for protection against the weather. In these samples, the knit fabric construction of the subject garments would not provide sufficient protection from the elements to the wearer when worn outside on cold days. In addition features such as a hood, and long length, are not adequate proof that a garment is designed for use as a jacket or coat. In fact, today these features are commonly found on a variety of upper body garments as part of a new fashion trend for these products which the industry has termed "sweatercoats". Customs would not consider the subject garments to be sweater like if the garments contained a lining or heavier material as typically associated with a coat.

Heading 6110, HTSUSA, specifically provides for "similar articles" which have a likeness to the articles which are specifically named in the heading. Customs notes that the subject garments are similar to a sweater and meet all of the above cited definitions for sweaters with the exception of the length. Furthermore, given that the terms of Heading 6110 specifically provides for garments similar to sweaters, the ENs to heading 6110, HTSUSA, cannot be interpreted in such a manner to narrow the scope of the actual tariff heading.

Classification of other garments with a longer length has previously been considered by Customs and these garments have been consistently classified as sweater-like garments of heading 6110, HTSUS. In HQ 951298, dated September 1, 1992; HQ 955084, dated March 23, 1994; HQ 954827, dated December 8, 1993; and HQ 955488, dated April 6, 1994, Customs considered garments which exceeded the length requirements stated in the EN, reaching to the mid thigh area or below, and classified the merchandise in heading 6110, HTSUS. In each of the above cited rulings Customs acknowledged that the garments had "sweater like characteristics" and provided warmth but not protection from the elements. Each of these garments also had a full frontal opening and button closure similar to a jacket or coat but were more akin to sweaters in "fabric, construction, styling and use" in the same manner as the merchandise at issue which is properly classified in heading 6110, HTSUS.

Furthermore, in past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), *aff'd* 786 F.2d 1144 (CAFC, April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. Upon review of current Fall fashion retail catalogs, Customs notes that these sweatercoats are the current hot fashion item for Fall 2001. In several Fall retail catalogs, such as Victoria's Secret®, J.Jill®, Lord & Taylor®, and Nordstrom®, these garments are being referred to as "sweatercoats" and are worn over either lightweight shirts or layered with other sweaters to create a warmer effect. The advertising for these garments indicates that the garments are to be worn in much the same way as a sweater. Moreover, Customs notes that these garments are being sold in the same departments as "traditional" sweaters in retail stores this Fall.

Accordingly, we find that the subject samples were erroneously classified in the original Customs rulings which were issued to your company. As such, the subject samples are

properly classified as sweaters or as similar to sweaters in heading 6110, HTSUS, as appropriate.

Holding:

The following rulings are hereby revoked:

NY G86050, dated January 26, 2001
PD H80571, dated May 21, 2001
PD H80420, dated May 10, 2001
PD G89023, dated April 19, 2001
PD G88233, dated March 22, 2001
PD G86813, dated March 12, 2001
PD G86510, dated February 8, 2001

The following rulings are hereby modified:

PD G86712, dated February 28, 2001
PD F83090, dated February 23, 2000
PD F83556, dated April 6, 2000

Samples 1, 3, 4, 7, 8, 9, 11, 12 and 13 are properly classified under subheading 6110.10.2080, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other: Women's or girls'." The general column one rate of duty is 16.3 percent *ad valorem*. The applicable textile restraint category is 438.

Samples 2 and 5 are properly classified under subheading 6110.30.1520, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Containing 23 percent or more by weight of wool or fine animal hair: Sweaters: Women's or girls'." The general column one rate of duty is 17 percent *ad valorem*. The applicable textile restraint category is 446.

Sample 6, style 11TD14178, is properly classified under subheading 6110.20.2020, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other: Sweaters: Women's." The general column one rate of duty is 17.8 percent *ad valorem*. The applicable textile restraint category is 345.

Sample 10, style C21500538, is properly classified under subheading 6110.10.2030, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other: Sweaters: Women's." The general column one rate of duty is 16.3 percent *ad valorem*. The applicable textile restraint category is 446.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Effect on Other Rulings:

The following rulings which deal with similar merchandise are revoked or modified as follows and will also be effective 60 days from date of publication of this ruling:

Ruling Number	Issue Date	Type of Customs Action	To Whom Addressed	Style # of garment(s)	Correct HTSUSA Classification
PD H81739	6/18/01	Modification	AMC	61801; 61802	6110.30.1520; 6110.30.1560
PD H80051	5/4/01	Revocation	AMC	EH 073016	6110.30.1560
PD H80053	4/26/01	Revocation	AMC	54623	6110.10.2080

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD G88792	4/11/01	Modification	AMC	FM2224; FM2228; FM2221	6110.10.2080; 6110.30.1520; 6110.10.2030
PD G88093	4/2/01	Revocation	AMC	5425	6110.10.2080
NY G80859	6/14/00	Revocation	Avon Products	PP204117	6110.30.3055
NY G87628	3/23/01	Modification	Grunfeld, Desiderio on behalf of Bernard Chaus	50419	6110.10.2080
PD H80504	5/22/01	Revocation	Fritz & Co. on behalf of B. Moss	576	6110.30.3055
PD G89151	4/19/01	Revocation	Total Port Clearance on behalf of Belford	4020	6110.10.2030
PD H80757	5/29/01	Modification	Grunfeld, Desiderio on behalf of By Design LLC	19047; 19008	6110.30.3055; 6110.30.3055
PD G89982	5/10/01	Revocation	C.F.L. Sportswear Trading, Inc.	0222258	6110.90.9042
PD G84780	12/27/00	Revocation	C.F.L. Sportswear Trading, Inc.	SW2017	6110.10.2030
PD F86133	4/25/00	Revocation	C.F.L. Sportswear Trading, Inc.	SW3411	6110.20.2020
PD H80691	6/4/01	Revocation	Dillard's Inc.	131S3095	6110.30.3020
PD G88184	3/29/01	Revocation	Donkenny Apparel	221679; 221680	6110.10.2080; 6110.10.2080
NY G89632	5/3/01	Revocation	Donna Karan	73310222VA	6110.10.2080
NY F89548	7/27/00	Revocation	Espirit de Corp	5435213	6110.10.2030
NY G88075	3/27/01	Revocation	Eddie Bauer, Inc.	010-2299/ 010-2300/ 010-2301	6110.10.2080
PD H81218	6/6/01	Modification	Eddie Bauer, Inc.	099-3729/ 009-3730/ 009-3731	6110.30.1560
PD H80425	5/25/01	Revocation	Prime Transport on behalf of E.M. Lawrence	134433	6110.90.9042
PD F84671	4/6/00	Revocation	Grunfeld Desiderio on behalf of 525 Made in America	0789	6110.20.2075
NY G80262	8/18/00	Revocation	The Gap on behalf of Banana Republic	814176	6110.90.9090
PD F83190	3/21/00	Revocation	The Gap on behalf of Banana Republic	814016	6110.10.2080
PD F85279	4/17/00	Revocation	The Gap, Inc	129906	6110.30.1520
NY G88190	4/9/01	Revocation	Great American Sweater Co.	1607J/30567	6110.30.3020
PD H80756	6/7/01	Modification	Hecny Brokers on behalf of Knits Cord	7260	6110.30.3055

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD H80024	5/10/01	Revocation	C-Air International on behalf of JDR Apparel	2301-2-14	6110.90.9042
PD G89178	4/25/01	Revocation	J.C. Penney Corporation	862-3334/ 234-3334/ 710-3334/ 981-3334	6110.30.3020
PD G88740	4/23/01	Revocation	Carmichael Brokers on behalf of John Paul Richard	M6107883; M1157109	6110.30.3055; 6110.30.3020
PD G87563	3/16/01	Revocation	The J. Jill Group	2361	6110.20.2075
PD G87576	3/12/01	Revocation	Mac & Jac	A 6169	6110.30.3055
NY G88949	4/16/01	Revocation	Grunfeld Desiderio on behalf of Mast Industries	3016B	6110.30.3055
NY G81395	9/26/00	Modification	Gemm Custom Brokers on behalf of Michael Simon	S10047	6110.30.3055
PD F84341	3/31/00	Revocation	Mark Group	BPK 9920	6110.30.1520
PD G89033	4/19/01	Revocation	Grunfeld, Desiderio on behalf of Mast Industries	96H1944	6110.30.1560
PD G85699	1/19/01	Revocation	Vandegrift Forwarding on behalf of Nautica Jeans	FSW 305	6110.10.2080
PD F85566	4/21/00	Revocation	MSAS Global on behalf of Newport News, Inc.	F00-61-015	6110.30.3055
NY G88749	5/12/01	Revocation	Sharretts, Paley on behalf of Polo Ralph Lauren	17165	6110.10.1020
PD G87734	4/11/01	Revocation	QVC, Inc.	A103107	6110.30.1560
NY G83575	11/8/00	Revocation	Spiegel Imports	16-6157s	6110.30.3055
PD G89715	5/7/01	Revocation	Spiegel Imports	38-5824s	6110.30.1560
NY G89021	4/26/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1141204	6110.30.1520
PD H80743	6/7/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1153510	6110.10.2080
PD H80488	5/8/01	Revocation	Target Corporation	T12847	6110.30.3055
PD G89468	5/2/01	Revocation	Wet Seal	WSS 7560; WSS 7547	6110.30.3020; 6110.30.3020
PD G89157	4/25/01	Revocation	Wet Seal	WS 7324D	6110.30.3055
PD G88797	4/12/01	Revocation	Wet Seal	WSS 7285	6110.30.3055

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

New York, NY, December 6, 2000.

CLA-2-61:RR:NC:TA:359 G84255

Category: Classification

Tariff No. 6102.30.2010

MS. MELBA R. DAIRO
FEDERATED MERCHANDISING GROUP
1440 Broadway
New York, NY 10018

Re: The tariff classification of a woman's coat from Hong Kong.

DEAR MS. DAIRO:

In your letter dated November 3, 2000, you requested a tariff classification ruling.

The submitted sample, style 8234, is a woman's coat that is constructed from 90% acrylic, 5% wool, 5% polyester, knit fabric. The coat extends from the shoulders to the knee area. The coat features a rib knit pointed collar, long sleeves with turn back ribbed cuffs, a full front opening with a 5 button ribbed placket, 2 front ribbed patch pockets below the waist, a ribbed bottom, 2 belt loops, and a self fabric tie closure at the waist.

Your sample is being returned as requested.

The applicable subheading for the coat will be 6102.30.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of manmade fibers: other. The duty rate will be 28.9% ad valorem. The rate of duty for 2001 will be 28.7% ad valorem.

The coat falls within textile category designation 635. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mike Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, April 11, 2001.
CLA-2-61:RR:NC:N3:359 G87851
Category: Classification
Tariff No. 6102.90.1000

MS. MELBA R. DAIRO
FEDERATED MERCHANDISING GROUP
11 Penn Plaza
New York, NY 10001

Re: The tariff classification of a woman's coat from China.

DEAR MS. DAIRO:

In your letter dated March 5, 2001, you requested a ruling on tariff classification. Your sample is being returned as requested.

The submitted sample, style number 8081, is a woman's coat that is constructed from 75% silk, 25% nylon, knit fabric. The coat extends from the shoulders to the knees and features the following: a V-neckline, long tubular hemmed sleeves, a full front opening with 8 button closures, and a tubular hemmed bottom.

The applicable subheading for this product will be 6102.90.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of other textile materials: containing 70 percent or more by weight of silk or silk waste. The general rate of duty will be 2.5 percent ad valorem.

This product falls within textile category designation 735. Based upon international textile trade agreements silk products of China are currently not subject to quota nor the requirement of a visa.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, May 22, 2001.
CLA-2-61:111 H80428
Category: Classification
Tariff No. 6102.20.0010

MELBA DAIRO
FEDERATED MERCHANDISING GROUP
11 Penn Plaza
New York, NY 10001

Re: The tariff classification of a woman's knitted coat from Hong Kong.

DEAR MS. DAIRO:

In your letter dated April 23, 2001 you requested a tariff classification ruling. The sample will be returned as requested.

The garment, style 18438, is a woman's knitted coat of 100% cotton. The garment features a collar, long sleeves, extends mid calf and has a belt for closure.

The applicable subheading for the garment will be 6102.20.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats * * * and similar articles, knitted or crocheted, other than those of heading 6104, of cotton, women's. The rate of duty will be 16.2%.

The garment falls within textile category designation 335. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

JORGE L. FLORES,
*Port Director,
Norfolk, Virginia.*

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New Orleans, LA, May 25, 2001.

CLA-2-61-NO:TC 106
Category: Classification
Tariff No. 6102.30.2010

MS. MELBA R. DAIRÓ
FEDERATED MERCHANDISING GROUP
11 Penn Plaza
New York, NY 10001

Re: The tariff classification of a women's knit coat from Hong Kong.

DEAR MS. DAIRÓ:

In your letter dated April 25, 2001, you requested a tariff classification ruling.

The submitted sample, Style # 9702 is a women's coat composed of 100% acrylic knit fabric constructed with nine or fewer stitches per two centimeters measured in the direction the stitches were formed. The coat features a full frontal opening with a six-button closure; a collar with loose fringe-like pile; long sleeves; and a length which extends to below the calf. Per your request, your sample is enclosed herewith.

The applicable subheading for the coat will be 6102.30.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104: of man-made fibers: other: other: women's. The rate of duty will be 28.7 percent ad valorem.

The coat falls within textile category designation 635. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of

shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

If you have any questions regarding the ruling, contact Field National Import Specialist Corliss S. Smith at (504) 670-2430 or National Import Specialist Michael Crowley at (212) 637-7077.

TODD OWEN,
Port Director,
New Orleans, Louisiana.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, May 4, 2001.

CLA-2-61:111 G89153
Category: Classification
Tariff No. 6102.10.0000

MELBA DAIRO
FEDERATED MERCHANDISING GROUP
11 Penn Plaza
New York, NY 10001

Re: The tariff classification of a woman's coat from Hong Kong.

DEAR MS. DAIRO:

In your letter dated April 6, 2001 you requested a tariff classification ruling. The sample will be returned as requested.

The garment, style 8078, is a woman's boiled wool coat. The garment features long sleeves, a shawl collar, a single front button closure and extends to the knee.

The applicable subheading for the coat will be 6102.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats * * * and similar articles, knitted or crocheted, other than those of heading 6104, of wool or fine animal hair. The rate of duty will be 59.6 cents per kilo plus 17.5%.

The garment falls within textile category designation 435. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

JORGE L. FLORES,
Port Director,
Norfolk, Virginia.

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, May 2, 2001.

CLA-2-61: CO: CH: DGD IO5 G89979

Category: Classification

Tariff No. 6102.20.0010

MS. MELBA R. DAIRO
FEDERATED MERCHANDISING GROUP
11 Penn Plaza
New York, NY 10001

Re: The tariff classification of a woman's knitted cotton coat from Hong Kong.

DEAR MS. DAIRO:

In your letter dated April 12, 2001, you requested a tariff classification ruling. Your sample will be returned as per your request.

The submitted sample, Style 9357, is a woman's coat constructed of 100% cotton 2 x 2 rib knitted fabric. The garment, which extends from the shoulders to below mid-thigh, features a v-neckline, a full frontal closure with six buttons, long sleeves, two large patch pockets below the waist, belt loops, a self fabric belt, and a straight edge bottom.

The applicable subheading for Style 9357 will be 6102.20.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for overcoats, carcoats, capes, cloaks, anoraks, windbreakers and similar articles, knitted or crocheted, other than those of heading 6104: of cotton: women's. The rate of duty will be 16.2%.

Style 9357 falls within textile category designation 335. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact Field National Import Specialist Dolores Derer at 312/983-1304 or National Import Specialist Michael Crowley at 212/637-7077.

ROBYN DESSAURE,

Port Director,
Chicago, Illinois.

[ATTACHMENT J]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Charlotte, NC, April 30, 2001.

CLA-2-61:CLT:129 G89235
Category: Classification
Tariff No. 6102.30.2010

MS. MELBA R. DAIRO
FEDERATED MERCHANDISING GROUP
11 Penn Plaza
New York, NY 10001

Re: The tariff classification of women's 100% acrylic knitted coats from Hong Kong.

DEAR MS. DAIRO:

In your letter dated April 12, 2001, you requested a tariff classification ruling. As requested, your sample will be returned.

Style No. 9700 is a woman's long, 100% acrylic knitted split front sweater coat. It features a 1 x 1 rib collar, full frontal opening with loop and button front closure, long hemmed sleeves and a hemmed bottom. There are no pockets, no belt, and no lining. The garment length measures 42 inches from the center back. There are 4 stitches per 2 cm in the horizontal direction and 5 stitches per 2 cm in the vertical direction.

Style No. 9700P is a woman's long, 100% acrylic knitted split front sweater coat. It features a 1 x 1 rib collar, full frontal opening with loop and button front closure, long hemmed sleeves and a hemmed bottom. There are no pockets, no belt, and no lining. The garment length measures 36 inches from the center back. There are 4 stitches per 2 cm in the horizontal direction and 5 stitches per 2 cm in the vertical direction.

The applicable subheading for Style Nos. 9700 and 9700P is 6102.30.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, of man-made fibers, knitted or crocheted. The rate of duty will be 28.7%.

The jacket falls within textile category designation 635. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status*, an internal issuance of the U.S. Customs Service, which is available for inspection at the Customs Web site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact Field National Import Specialist Betty Small at 704-329-6124 or National Import Specialist Michael Crowley at 212-637-7077.

JOHN J. QUEALY,
Port Director,
Charlotte.

[ATTACHMENT K]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, April 17, 2001.

CLA-2-61-DD:C:D:101

Category: Classification

Tariff No. 6102.10.0000

MS. MELBA R. DAIRO
FEDERATED MERCHANDISING GROUP
11 Penn Plaza
New York, NY 10001

Re: The classification of a women's coat from Japan.

DEAR MS. DAIRO:

In your letter dated March 30, 2001, you requested a tariff classification ruling.

Style number 9188 is a women's 100% boiled wool knitted coat. The coat extends from the shoulders to just below mid-thigh. It features a deep V-neck, a full frontal opening with a single hook-and-eye closure at the center front of the garment, long hemmed sleeves and a straight hemmed bottom.

Your sample is returned as requested.

The applicable subheading for the coat will be 6102.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104: Of wool or fine animal hair. The rate of duty will be 59.6 cents per kilogram plus 17.5 percent ad valorem.

The coat falls within textile category designation 435. This merchandise is not subject to quota or the requirements of a visa.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

If you have any questions regarding the ruling, contact Field National Import Specialist Valerie Sargent at (617) 565-6123 or National Import Specialist Michael Crowley at (212) 637-7077.

NORA E. EHRLICH,
Port Director,
Boston, Massachusetts.

[ATTACHMENT L]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, April 10, 2001.

CLA-2-61:S:S:N:103:JS

Category: Classification

Tariff No. 6102.20.0010

MS. MELBA DAIRO
FEDERATED MERCHANDISING CORPORATION
1440 Broadway
New York, NY

Re: The classification of garments from Hong Kong.

DEAR MS. DAIRO:

In your letter of March 30, 2001, you requested a tariff classification ruling. Sample of style 9238 was submitted for classification.

Style 9238 is composed of 100% cotton knit fabric. The garment extends from the shoulders to below the knee. It features a collar, long sleeves, a full frontal opening with a button closure, a tie belt of self fabric, and self fabric belt loops. Your sample is being returned to you.

The applicable subheading for the garment is 6102.20.0010, Harmonized Tariff Schedule of the United States, which provides for women's cotton knit coats. The rate of duty is 16.2%. The garment falls into textile category 335. As products of Hong Kong, this merchandise is presently subject to visa requirements based on international trade agreements and subject to quota reporting.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction. If you have any questions regarding the ruling, contact Field National Import Specialist Joseph D. Stephen at 518-298-8337 or National Import Specialist Michael Crowley at 212-637-7077.

CHRISTOPHER PERRY,
Port Director,
Champlain, N.Y.

[ATTACHMENT M]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 3, 2001.

APP-6-2-61:PD:A:TO:I:04 G88353
Category: Classification
Tariff No. 6102.30.2010

MELBA R. DAIRO
FEDERATED MERCHANDISING GROUP
11 Penn Plaza
New York, NY 10001

Re: The tariff classification of a woman's coat from Taiwan.

DEAR MS. DAIRO:

In your letter dated March 9, 2001, you requested a tariff classification ruling.

Style number 4028 is a woman's coat manufactured from knit fabric composed of 90 percent acrylic and 10 percent polyester. The fabric measures less than nine stitches per two centimeters measured in the horizontal direction.

The coat extends to mid-thigh and features a full frontal opening secured by six button closures. The coat has a collar, long sleeves, and a straight bottom. The coat also has an accompanying self-fabric tie belt that is supported on the garment by two belt loops.

The submitted sample will be returned under separate cover.

The applicable subheading for the coat will be 6102.30.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, capes, cloaks * * * and similar articles, knitted or crocheted, other than those of heading 6104. The rate of duty will be 28.7 percent ad valorem.

The coat falls within textile category designation 635. Based upon international textile trade agreements, products of Taiwan are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements that are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

If you have any questions regarding the ruling, contact Field National Import Specialist Roslyn Haynes at (305) 869-2692 or National Import Specialist Michael Crowley at (212) 637-7077.

THOMAS S. WINKOWSKI,
Port Director,
Miami Service Port.

[ATTACHMENT N]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, April 10, 2001.

CLA-2-61:CLT:I29 G89027

Category: Classification

Tariff No. 6102.30.2010

MS. MELBA R. DAIRO
FEDERATED MERCHANDISING GROUP
11 Penn Plaza
New York, NY 10001

Re: The tariff classification of women's 55% acrylic 45% cotton knitted coats from Hong Kong.

DEAR MS. DAIRO:

In your letter dated March 20, 2001, you requested a tariff classification ruling. As requested, your sample will be returned.

Style No. 9397 is a woman's 55% acrylic 45% cotton rib knitted sweater coat. It features a collar, full frontal opening with 6-button closure, a self fabric belt with two side loops, long sleeves, a self start cuff and bottom, and two patched pockets below the waist. The garment length measures 33 inches from the center back. There are 5 stitches per 2 cm in the horizontal direction and 7 stitches per 2 cm in the vertical direction.

The applicable subheading for Style No. 9397 is 6102.30.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, of man-made fibers, knitted or crocheted. The rate of duty will be 28.7%.

The jacket falls within textile category designation 635. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status*, an internal issuance of the U.S. Customs Service, which is available for inspection at the Customs Web site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact Field National Import Specialist Betty Small at 704-329-6124 or National Import Specialist Michael Crowley at 212-637-7077.

JOHN J. QUEALY,
Port Director,
Charlotte.

[ATTACHMENT O]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, February 22, 2001.
CLA-2-61:359:H:TC:CB2:BJ:128
Category: Classification
Tariff No. 6102.30.2010

FEDERATED MERCHANDISING GROUP
ATTN: MS. MELBA R. DAIRO
11 Penn Plaza
New York, NY 10001

Re: The tariff classification of a woman's knit coat of manmade fibers from Korea.

DEAR MS. DAIRO:

In your letter dated January 29, 2001, you requested a classification ruling.

Style 9668 is a woman's 100% acrylic ribbed knit coat that extends from the shoulder to the knee. The unlined garment features a full frontal opening secured by six button closures; a collar; long sleeves with stitched turned back cuffs; patch pockets below the waist; belt loops and a detached self-fabric tie belt.

The applicable subheading for the coat will be 6102.30.2010, Harmonized Tariff Schedule of the United States (HTS) which provides for women's or girls' overcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104: of man-made fibers: other: other: women's. The duty rate will be 28.7 percent ad valorem.

Style 9668 falls within textile category designation 635. Based upon international textile trade agreements, products from Korea are subject to quota and the requirement of a visa.

As requested, the sample will be returned.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact Field National Import Specialist Barbara Jarmon at (281) 985-6851 or National Import Specialist Michael Crowley at (212) 637-7077.

JOHN R. BABB,
Area Port Director,
Houston, Texas.

[ATTACHMENT P]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC, April 17, 2000.

CLA-2-61:K:TO:B8:114 F85294

Category: Classification

Tariff No. 6102.30.2010

MS. MELBA R. DAIRO
FEDERATED MERCHANDISING GROUP
1440 Broadway
New York, NY 10018

Re: The tariff classification of a woman's knit coat from Korea.

DEAR MS. DAIRO:

In your letter dated April 4, 2000, you requested a classification ruling.

Style number 8282W is a woman's coat constructed from a 90% polyester/10% spandex knit fabric. The garment is below the knee in length and has a full-front opening secured by a single button closure. The jacket also features long sleeves with hemmed cuffs, a v-shaped neckline and a hemmed bottom. The sample is being returned as requested.

The applicable subheading for the garment will be 6102.30.2010, Harmonized Tariff Schedule of the United States, which provides for women's overcoats, carcoats, capes, cloaks, anoraks and similar articles: knitted or crocheted of man-made fibers. The duty rate will be 28.9% ad valorem.

The garment falls within textile category designation 635. As a product of Korea, this merchandise is subject to quota and visa requirements based upon international textile trade agreements.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 (19 C.F.R. 177) of the Customs Regulations.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

SUSAN T. MITCHELL,

*Area Director,
JFK Airport.*

[ATTACHMENT Q]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Seattle, WA, June 5, 2001.

CLA-2-61 I09
Category: Classification
Tariff No. 6102.30.2010

MELBA R. DAIRO
FEDERATED MERCHANDISING GROUP
11 Penn Plaza
New York, NY 10001

Re: The tariff classification of a woman's knit coat from China.

DEAR MS. DAIRO:

In your letter dated May 8, 2001, you requested a classification ruling.

The submitted sample, style 19410B, is a woman's coat finely knit of 77% rayon and 23% nylon. The coat reaches to below mid-thigh, has no means of closure, and features long hemmed sleeves, a hemmed bottom, and a self-fabric belt at the waist.

Your sample will be returned as requested.

The applicable subheading for the coat will be 6102.30.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104, of man-made fibers, other, other, women's. The duty rate will be 28.7%.

Style 19410B falls within textile category designation 635. Based upon international textile trade agreements, products of China are subject to quota and the requirements of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

KATHLEEN M. SARTEN,
Area Port Director,
Seattle.

[ATTACHMENT R]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, March 9, 2001.
CLA-2-61:RR:NC:N3:359 G87180
Category: Classification
Tariff No. 6102.30.1000

MR. JOHN IMBROGULIO
NORDSTROM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Ave., Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of a woman's coat from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated February 2, 2001, you requested a ruling on tariff classification. Your sample is being returned as requested.

The submitted sample, style number 27773, is a woman's coat that is constructed from 70% acrylic, 30% wool, 1x1 rib knit fabric. The coat extends from the shoulders to below the knees. The coat features a V-neckline; long sleeves; and a full front opening with no means of closure.

The applicable subheading for this product will be 6102.30.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's overcoats * * * and similar articles, knitted, other than those of subheading 6104: of manmade fibers: other: containing 23 percent or more by weight of wool or fine animal hair. The general rate of duty will be 65.6 cents + 19.2 percent ad valorem.

This product falls within textile category designation 435. Based upon international textile trade agreements products of Hong Kong are currently subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division.

[ATTACHMENT S]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, February 6, 2001.
CLA-2-61:RR:NC:N3:359 G86423
Category: Classification
Tariff No. 6102.30.2010

MR. JOHN IMBROGULIO
NORDSTROM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Ave., Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of a woman's coat from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated January 8, 2001, you requested a ruling on tariff classification.

The submitted sample, style number 14276, is a woman's coat that is constructed from 62% acrylic, 18% polyester, 10% wool, 8% nylon, 2% spandex, knit fabric. The coat extends from the shoulders to the knees and features the following: a fold down collar; long sleeves with ribbed cuffs; a full front opening with a zipper closure; and a ribbed bottom.

Your sample is being returned as requested.

The applicable subheading for the coat will be 6102.30.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of manmade fibers: other. The general rate of duty will be 28.7 percent ad valorem.

The coat falls within textile category designation 635. Based upon international textile trade agreements products of Hong Kong are currently subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division.

[ATTACHMENT T]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

New York, NY, April 26, 2001.

CLA-2-61:RR:NC:TA:359 G89855

Category: Classification

Tariff No. 6102.30.2010

MR. JOHN IMBROGULIO
NORDSTROM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Avenue, Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of a woman's coat from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated April 3, 2001, you requested a tariff classification ruling. As requested, the sample will be returned to you.

Your submitted sample, style 14405, is a 85% acrylic and 15% mohair knit woman's coat. The garment features a hood, long sleeves with hemmed ends, a full frontal opening with two hook and loop closures, two pockets in the waist area and a hemmed bottom. The garment extends from the head and shoulders to below the mid-thigh of the wearer.

The applicable subheading for style 14405 will be 6102.30.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, car-coats, capes, cloaks anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104: of man-made fibers: other, women's. The duty rate will be 28.7 percent ad valorem.

Style 14405 falls within textile category designation 635. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mike Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT U]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
New York, NY, October 13, 2000.
CLA-2-61:RR:NC:TA:359 G82426
Category: Classification
Tariff No. 6102.20.0010

MR. JOHN IMBROGULIO
NORDSTROM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Ave., Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of a woman's coat from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated September 13, 2000 you requested a tariff classification ruling.

The submitted sample, style number 11755, is a woman's coat that extends from the shoulders to the knee area. The garment is constructed from 100% cotton, knit fabric. The coat features a crew neckline, long sleeves with rib knit cuffs, a full front opening with a one button closure, and a rib knit bottom.

Your sample is being returned as requested.

The applicable subheading for the coat will be 6102.20.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of cotton. The duty rate will be 16.3% ad valorem.

The coat falls within textile category designation 335. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mike Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division.

[ATTACHMENT V]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

New York, NY, January 8, 2001.

CLA-2-61:RR:NC:TA:359 G85312

Category: Classification

Tariff No. 6102.30.2010

MR. JOHN IMBROGULIO
NORDSTROM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Ave., Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of a woman's coat from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated December 5, 2000, you requested a tariff classification ruling.

The submitted sample, style number 18552, is a woman's coat that is constructed from 94% rayon, 6% nylon knit fabric. The coat extends from the shoulders to the knee area. The coat features a V-neckline; long sleeves; a full front opening with a 3 button closure; 2 belt loops; and a self fabric tie belt.

Your sample is being returned as requested.

The applicable subheading for the coat will be 6102.30.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of manmade fibers: other: other. The duty rate will be 28.7% ad valorem.

The coat falls within textile category designation 635. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be effected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mike Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT W]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 6, 2001.
CLA-2-61:K:TO:B7:114 G89362
Category: Classification
Tariff No. 6102.30.1000

MR. JOHN IMBROGULIO
NORDSTROM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Avenue Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of a woman's knit coat from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated March 21, 2001, you requested a classification ruling.

Style number 52132F is a woman's coat constructed from a 70% acrylic/30% wool knit fabric. The garment has a full-front opening with three button closures and extends below mid thigh in length. Other features include long sleeves, a collar, slits at the side and a self-fabric tie belt. The sample is being returned as requested.

The applicable subheading for the garment will be 6102.30.1000, Harmonized Tariff Schedule of the United States, which provides for women's knit coats, capes and similar articles of man-made fibers containing 23% or more by weight of wool or fine animal hair. The duty rate will be 19.2% ad valorem plus 65.6 cents per kilogram.

The garment falls within textile category designation 435. As a product of Hong Kong, this merchandise is subject to quota and export licensing requirements based upon international textile trade agreements.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

If you have any questions regarding the ruling, contact Field Import Specialist Mary Franklin at 718-553-1630 or National Import Specialist Michael Crowley at 212-637-7077.

SUSAN T. MITCHELL,
Area Director,
JFK Airport.

[ATTACHMENT X]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, February 15, 2001.

CLA-2-61-PD:A:TC:1:127: G86918

Category: Classification

Tariff No. 6102.20.0010 and 6110.20.2020

JOHN IMBROGULIO
IMPORT SPECIALIST
NORDSTROM
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Avenue, Suite 1000
Seattle, WA 98101-0870

Re: The tariff classification of a woman's coat and a woman's sweater from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated January 25, 2001, you requested a tariff classification ruling.

The submitted samples, style #11408M and style #11408M2, are women's garments constructed from 100 percent cotton knit fabric. The fabric is constructed with less than nine stitches per two centimeters measured in the horizontal direction.

Style #11408M features long sleeves with hemmed cuffs, a hood, a full frontal opening with five button closures, a self-fabric belt, and a straight bottom. The garment extends to the knee of the wearer.

Style #11408M2 features long sleeves with hemmed cuffs, a hood, a full frontal opening with five button closures, a self-fabric belt, and a straight bottom. The garment extends to the mid-thigh of the wearer.

The submitted samples will be returned under separate cover.

The applicable subheading for style #11408M will be 6102.20.0010 Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104: of cotton: women's. The rate of duty will be 17.8% percent ad valorem.

The applicable subheading for style #11408M2 will be 6110.20.2020 Harmonized Tariff Schedule of the United States (HTS), which provides for sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of cotton: other: other: sweaters: women's. The rate of duty will be 17.8% percent ad valorem.

Style #11408M falls within textile category designation 335. Style #11408M2 falls within textile category designation 345. Based upon international textile trade agreements, products of Hong Kong are subject to quota and to the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact Field National Import Specialist Karen Sikorski at 305-869-2517 or National Import Specialist Michael Crowley at 212-637-7077.

THOMAS S. WINKOWSKI,

Port Director,
Miami Service Port.

[ATTACHMENT Y]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE.
Washington, DC, March 28, 2001.
CLA-2-61:PD:A:TO:I:104 G87392
Category: Classification
Tariff No. 6102.10.0000 and 6110.10.2080

JOHN IMBROGULIO, IMPORT SPECIALIST
NORDSTROM, INCORPORATED
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Avenue, Suite 1000
Seattle, WA 98101-0870

Re: The tariff classification of women's garments from Hong Kong.

DEAR MR. IMBROGULIO:

This letter is a correction to the original ruling letter dated March 13, 2001.

The submitted samples, style number 3BW52901 and style number 3BW59366, are women's garments constructed from 100 percent wool knit fabric. The fabric measures more than nine stitches per two centimeters counted in the horizontal direction.

Style number 3BW52901 is a coat that extends to the knee. The coat features a full frontal opening secured by three button closures. The coat has long sleeves, a notched collar, and two front pockets located below the waist. The rear of the coat features an eight-inch slit at the bottom. The coat also has a straight, hemmed bottom.

Style number 3BW59366 is a woman's cardigan that extends to the hip. The cardigan features a full frontal opening with a zipper closure. The garment has long sleeves and a straight bottom.

The submitted samples will be returned under separate cover.

The applicable subheading for the coat will be 6102.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers, and similar articles, knitted or crocheted, other than those of HTS heading 6104: of wool or fine animal hair. The rate of duty will be 17.5 percent ad valorem plus 59.6 cents per kilogram.

The applicable subheading for the cardigan will be 6110.10.2080, Harmonized Tariff Schedule of the United States (HTS), which provides for sweaters, pullovers, sweatshirts, waistcoats (vests), and similar articles, knitted or crocheted: of wool or fine animal hair * * * other * * * other: women's or girls'. The rate of duty will be 16.3 percent ad valorem.

The coat falls within textile category designation 435. The cardigan falls within textile category designation 438. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements that are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

If you have any questions regarding the ruling, contact Field National Import Specialist Roslyn Haynes at (305) 869-2692 or National Import Specialist Michael Crowley at (212) 637-7077.

THOMAS S. WINKOWSKI,
Port Director,
Miami Service Port.

[ATTACHMENT 2]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC, March 7, 2001.

CLA-2-61:CLT:I29 G87881

Category: Classification

Tariff No. 6102.20.0010

MR. JOHN IMBROGULIO
IMPORT SPECIALIST
NORDSTROM
1617 Sixth Avenue, Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of women's 100% cotton knitted coats from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated February 21, 2001, you requested a tariff classification rulings. As requested, your sample will be returned.

Style No. 11408 is a woman's 100% cotton knitted coat. It features a 6-button full frontal opening, a self fabric belt, long sleeves, and a hood. The coat extends to the knee and measures 7 stitches per centimeter horizontally and 6 stitches per centimeter vertically.

Style No. 11319 is a woman's 58% cotton 48% acrylic knitted coat. It features a 5-button full frontal opening, long sleeves, and a v-neck. It extends past the mid-thigh and measures 4 stitches per centimeter horizontally and 6 stitches per centimeter vertically.

The applicable subheading for Style Nos. 11408 and 11319 is 6102.20.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, of cotton, knitted or crocheted. The rate of duty will be 16.2%.

The jacket falls within textile category designation 335. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status*, an internal issuance of the U.S. Customs Service, which is available for inspection at the Customs Web site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact Field National Import Specialist Betty Small at 704-329-6124 or National Import Specialist Michael Crowley at 212-637-7077.

JOHN J. QUEALY,

Port Director,

Charlotte.

[ATTACHMENT AA]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, August 24, 2000.
CLA-2-61:RR:NC:TA:359 G80138
Category: Classification
Tariff No. 6102.30.10000

MR. JOHN IMBROGULIO
NORDSTROM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Ave., Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of a woman's knit coat from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated July 25, 2000 and additional information submitted on August 18, 2000, you requested a tariff classification ruling.

The submitted sample, style number 15088, is a woman's 50% mohair, 50% acrylic, knit coat that extends from the shoulders to below mid-thigh. The coat features a V-neckline, long sleeves, and a full front opening with three button closures.

Your sample is being returned as requested.

The applicable subheading for the coat will be 6102.30.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of manmade fibers: other: containing 23 percent or more by weight of wool and fine animal hair. The duty rate will be 66 cents/kg + 19.3% ad valorem.

You have indicated in your letter that the fabric is a blend of 50 mohair, 50 acrylic. Garments which are claimed to be constructed from such a blend are subject, upon importation, to laboratory analysis by the U.S. Customs Service to verify the actual weight of the component fibers. Please be advised that a slight variation, from the above stated fiber content, may affect the classification and the textile category designation of the subject garment.

The coat falls within textile category designation 435. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mike Crowley at 212-837-7077.

ROBERT B. SWIERUPSKI,

Director,
National Commodity Specialist Division.

[ATTACHMENT BB]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

New York, NY, August 18, 2000.

CLA-2-61:RR:NC:TA:359 G80136

Category: Classification

Tariff No. 6102.20.0010 and 6102.90.9030

MR. JOHN IMBROGULIO
NORDSTROM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Ave., Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of two women's coats from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated July 24, 2000 you requested a tariff classification ruling.

You submitted two samples. Style number 17999 is a woman's 52% cotton, 48% acrylic, 1x1 rib knit coat that extends from the shoulders to below the mid-thigh. The coat features a V-neckline, long sleeves, a full front opening with three buttons, and two front patch pockets in the waist area.

Style number 15074 is a woman's 55% ramie, 20% acrylic, 15% wool, 10% nylon, 1x1 rib knit coat that extends from the shoulders to below the mid-thigh. The coat features a notched-lapel collar, long sleeves, and a full front opening with five button closures.

Your samples are being returned as requested.

The applicable subheading for style 17999 will be 6102.20.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of cotton. The duty rate will be 16.3% ad valorem.

The subheading for style 15074 will be 6102.90.9030, which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of other textile materials: other: other. The duty rate will be 5.9% ad valorem.

Style 17999 falls within textile category designation 335; style 15074, category 835. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mike Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT DD]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, August 7, 2000.
CLA-2-61:RR:NC:TA:359 G80130
Category: Classification
Tariff No. 6102.30.10000

MR. JOHN IMBROGULIO
NORDSTROM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Ave., Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of a woman's coat from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated July 14, 2000 you requested a tariff classification ruling.

The submitted sample, style 15087, is a woman's 50% mohair, 30% nylon, 20% acrylic, knit coat that extends from the shoulders to the knee. The garment features a V-neckline, long sleeves with fringed cuffs, a full front opening with three hook and eye closures, belt loops, a self fabric belt at the waist, and a fringed bottom.

Your sample is being returned as requested.

The applicable subheading for the coat will be 6102.30.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of manmade fibers: other: containing 23 percent or more by weight of wool or fine animal hair. The duty rate will be 66 cents/kg + 19.3% ad valorem.

The coat falls within textile category designation 435. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

You have indicated in your letter that the fabric is a blend of 50% mohair, 30% nylon and 20% acrylic (50% manmade fibers). Garments which are claimed to be constructed from such a blend are subject, upon importation, to laboratory analysis by the U.S. Customs Service to verify the actual weight of the component fibers. Please be advised that a slight variation, from the above stated fiber content, may affect the classification and the textile category designation of the subject garment.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mike Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI,

*Director,
National Commodity Specialist Division.*

[ATTACHMENT EE]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Champlain, NY, August 3, 2000.

CLA-2-61:S:S:N:I03:JS

Category: Classification

Tariff No. 6110.30.3055 and 6102.90.9030

MR. JOHN IMBROGULIO
NORDSTROM, INC.
1617 Sixth Avenue
Seattle, WA

Re: The classification of garments from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter of July 24, 2000, you requested a tariff classification ruling. Samples of styles 14322 and 11282 were submitted for classification.

Style 14322 is composed of 82% acrylic/14% nylon/4% spandex finely knit fabric. The sleeveless garment features a v-neck, 3½ inch shoulder straps, and a neck tie.

Style 11282 is composed of 55% ramie/20% acrylic/15% wool/10% nylon knit fabric. The garment has a funnel neck, full frontal zippered opening, two pockets at the waist, long sleeves, and extends from the shoulders to the knee. Your samples are being returned to you.

The applicable subheading for the style 14322 is 6110.30.3055, Harmonized Tariff Schedule of the United States, which provides for women's knit pullovers of man made fibers. The rate of duty is 32.9%. The garment falls into textile category 639.

The applicable subheading for style 11282 is 6102.90.9030, Harmonized Tariff Schedule of the United States, which provides for women's knit coats of other textile materials. The rate of duty is 5.9%. The garment falls into textile category 835.

As products of Hong Kong, this merchandise is presently subject to visa requirements based on international trade agreements and subject to quota reporting.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

MARIAN KOLLINGER,

Acting Port Director,

Champlain, N.Y.

[ATTACHMENT FF]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
New York, NY, May 5, 2000.

CLA-2-61:RR:NC:TA:359 F86148
Category: Classification
Tariff No. 6102.30.1000

MR. JOHN IMBROGULIO
NORDSTROM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Ave., Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of a woman's coat from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated April 12, 2000 you requested a tariff classification ruling.

The submitted sample, style number 14226, is a woman's coat that is constructed from 37% wool, 37% acrylic, 26% nylon, knit fabric. The coat extends from the shoulder to below the mid-thigh and features a V-neckline, long sleeves, and a full front opening with 5 button closures. The neckline, sleeves, placket and the bottom of the garment are finished with ribbed fabric.

Your sample is being returned as requested.

The applicable subheading for the coat will be 6102.30.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of man-made fibers: containing 23 percent or more by weight of wool or fine animal hair. The duty rate will be 66 cents/kg + 19.3% ad valorem.

The coat falls within textile category designation 435. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mike Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI,

Director,
National Commodity Specialist Division.

[ATTACHMENT GG]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Boston, MA, March 7, 2000.

CLA-2-61-DD:C:D:101
Category: Classification
Tariff No. 6110.90.9090 and 6102.20.0010

MR. JOHN IMBROGULIO
IMPORT SPECIALIST
NORDSTROM, INC.
CUSTOMS COMPLIANCE DEPARTMENT
1617 Sixth Avenue, Suite 1000
Seattle, WA 98101-1742

Re: The classification of women's garments from Hong Kong.

DEAR MR. IMBROGULIO:

In your letter dated February 3, 2000, you requested a tariff classification ruling.

Style number 14248 is a women's sleeveless 55% ramie, 42% cotton, 2% nylon, 1% spandex knit pullover. The garment is constructed of 14 stitches per two centimeters measured in the horizontal direction. It extends from the shoulders to just below the waist and features a scoop neck in the front and a straight neckline in the rear and a straight hemmed bottom.

Style number 11030 is a women's 100% cotton knit coat. It extends from the neck to the knees and is constructed of 13 stitches per 2 centimeters measured in the horizontal direction. It features a hood without tightening, a full frontal opening with 10 button closures, two pockets below the waist, 8 inch side vents, long sleeves without tightening at the cuffs and a straight bottom.

Your samples are returned as requested.

The applicable subheading for style number 14248 will be 6110.90.9090, Harmonized Tariff Schedule of the United States (HTS), which provides for sweaters, pullovers, sweat-shirts, waistcoats (vests) and similar articles, knitted or crocheted: Of other textile materials: Other: Other: Other: Women's or girls'. The rate of duty will be 6 percent ad valorem.

The applicable subheading for style number 11030 will be 6102.20.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats, capes cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104: Of cotton: Women's. The rate of duty will be 16.3 percent ad valorem.

Style number 14248 falls within textile category designation 838 and style number 11030 falls within textile category designation 335. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirements of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

LARRY D. LEWIS,
Acting Port Director,
Boston, Massachusetts.

[ATTACHMENT HH]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE.
New York, NY, March 2, 2001.
CLA-2--RR:NC:N3:359 G85916
Category: Classification
Tariff No. 6102.10.0000 and 6110.10.2030

MR. DONALD S. SIMPSON
BARTHCO TRADE CONSULTANTS
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of three women's knit garments from Hong Kong.

DEAR MR. SIMPSON:

In your letter dated January 29, 2001, you requested a ruling on behalf of Jones Apparel Group USA, Inc. on tariff classification. Your samples are being returned.

You submitted three samples of women's 100% wool, knit garments. Style 121220438 is a merino wool knit coat that extends from the shoulders to below the knees. The coat features a mandarin collar; long hemmed sleeves; a full front opening with 7 button closures; 2 front inset vertical pockets below the waist; 2 belt loops; a self-fabric tie belt; and a hemmed bottom.

Style 121360288 is a lambswool double knit sweater with a detachable faux fur collar. The collar can be attached to the neck of the sweater with 7 snap closures. The outer surface of the sweater measures 9 or fewer stitches per 2 centimeters in the horizontal direction. The sweater features long hemmed sleeves; a full front opening with a zipper closure; 2 front flap pockets in the waist area; and a hemmed bottom.

The sweater and the faux fur collar are considered as a composite good. The essential character is imparted by the sweater; Harmonized Tariff Schedule of the United States (HTS), General Rules of Interpretation (GRI), Rule 3, noted.

Style 121370278 is a lambswool knit coat that extends from the shoulders to below the knees. The coat features a round neckline; long hemmed sleeves; a full front opening with 7 snap closures; 2 belt loops; a fake suede tie belt; and a hemmed bottom.

The applicable HTS subheading for the sweater will be 6110.10.2030, which provides for women's sweaters * * * and similar articles, knitted: of wool or fine animal hair: other. The general rate of duty will be 16.3% ad valorem.

The applicable HTS subheading for the two coats will be 6102.10.0000, which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of wool or fine animal hair. The general rate of duty will be 59.6 cents/kg + 17.5% ad valorem.

The two coats fall within textile category designation 435. The sweater falls in category 446. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R.177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT JJ]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

New York, NY, January 26, 2001.

CLA-2-61:RR:NC:TA:359 G86050

Category: Classification

Tariff No. 6102.10.0000

MR. JAMES J. KELLY

BARTHO

7575 Holstein Avenue

Philadelphia, PA 19153

Re: The tariff classification of a woman's coat from Thailand.

DEAR MR. KELLY:

In your letter dated January 2, 2001, on behalf of Jones Apparel Group USA, you requested a tariff classification ruling.

The submitted sample is a woman's coat that is constructed from 100% lambswool, knit fabric. The coat, style 13JBDF508, extends from the shoulders to the knee area and features the following: a V-neckline; long tubular hemmed sleeves; a full front opening with a self-fabric tie belt closure; two belt loops; and a tubular hemmed bottom.

Your sample is being returned under separate cover.

The applicable subheading for the coat will be 6102.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's overcoats * * * and similar articles, knitted, other than those of heading 6104: of wool or fine animal hair. The duty rate will be 59.6 cents/kg + 17.5% ad valorem.

The coat falls within textile category designation 435. Based upon international textile trade agreements products of Thailand are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be effected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mike Crowley at 212-637-7077.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT KK]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Miami, FL, May 21, 2001.

APP-6-2-61:PD:A:TO:I:104 H80571
Category: Classification
Tariff No. 6102.10.0000 and 6102.30.1000

JAMES J. KELLY
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of women's coats from Hong Kong.

DEAR MR. KELLY:

In your letter dated May 9, 2001, you requested a tariff classification ruling on behalf of Jones Apparel Group, USA.

The submitted samples are women's coats.

Style number 321690218 is constructed from knit fabric composed of 70 percent wool and 30 percent polyester. The coat extends below the knee and features a full frontal opening secured by six button closures. The garment has a shawl collar and long sleeves with turned back cuffs. The coat has a straight bottom and two front pockets located below the waist. The coat also has an accompanying self-fabric tie belt that is supported on the garment by two belt loops.

Style number 351163998 is constructed from 100 percent Merino wool knitted fabric. The coat extends below the knee and features a full frontal opening without closures. The coat has a shawl collar and long sleeves with turned back cuffs. The garment has a straight bottom and two front pockets located below the waist.

Style number 321830078 is constructed from knit fabric composed of 48 percent wool, 46 percent acrylic, and 6 percent nylon. The coat extends below the knee and features a full frontal opening without closures. The coat has a shawl collar, long sleeves, and two front pockets located below the waist. The coat also has an accompanying self-fabric tie belt that is supported on the garment by two belt loops.

The submitted samples will be returned under separate cover.

The applicable subheading for style number 321690218 and style number 351163998 will be 6102.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, capes, cloaks * * * and similar articles, knitted or crocheted, other than those of heading 6104: of wool or fine animal hair. The rate of duty will be 59.6 cents per kilogram plus 17.5 percent ad valorem.

The applicable subheading for style number 321830078 will be 6102.30.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, capes, cloaks * * * and similar articles, knitted or crocheted, other than those of heading 6104 * * * of man-made fibers * * * other: containing 23 percent or more by weight of wool or fine animal hair. The rate of duty will be 65.6 cents per kilogram plus 19.2 percent ad valorem.

All of the coats fall within textile category designation 435. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements that are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

If you have any questions regarding the ruling, contact Field National Import Specialist Roslyn Haynes at (305) 869-2692 or National Import Specialist Michael Crowley at (212) 637-7077.

THOMAS S. WINKOWSKI,
*Port Director,
Miami Service Port.*

[ATTACHMENT LL]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Chicago, IL, May 10, 2001.

CLA-2-61: CO: CH: DGD IO5 H80420
Category: Classification
Tariff No. 6102.10.0000

MR. JAMES J. KELLY
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of a woman's knitted wool coat from Hong Kong.

DEAR MR. KELLY:

In your letter dated April 27, 2001, you requested a tariff classification ruling on behalf of your client, Jones Apparel Group of Bristol, PA. Your sample will be returned as per your request.

The submitted sample, Style 353B13358, is a woman's coat constructed of 100% merino wool knitted fabric. The garment, which extends from the shoulders to the ankle, is unlined and features a v-neckline, a full frontal closure with ten buttons, long sleeves, two large patch pockets below the waist, and a straight edge bottom.

The applicable subheading for Style 353B13358 will be 6102.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girl' overcoats, carcoats, capes, cloaks, anoraks, windbreakers and similar articles, knitted or crocheted, other than those of heading 6104: of wool. The rate of duty will be 59.6cents/kg & 17.5%.

Style 353B13358 falls within textile category designation 435. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact Field National Import Specialist Dolores Derer at 312/983-1304 or National Import Specialist Michael Crowley at 212/637-7077.

ROBYN DESSAURE,
*Port Director,
Chicago, Illinois.*

[ATTACHMENT MM]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

Washington, DC, April 19, 2001.

CLA-2-61:K:TO:B7:114 G89023

Category: Classification

Tariff No. 6102.30.1000

MR. JAMES J. KELLY
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of a woman's knit coat from Hong Kong.

DEAR MR. KELLY:

In your letter dated March 30, 2001, you requested a classification ruling on behalf of Jones Apparel Group located at 250 Rittenhouse Circle, Bristol, PA 19007.

Style number 125e3408 is a woman's coat constructed from a 70% acrylic/30% wool knit fabric. The garment has a full-front opening with seven button closures and extends below the knee in length. Other features include long sleeves, two front patch pockets and a hood.

The applicable subheading for the garment will be 6102.30.1000, Harmonized Tariff Schedule of the United States, which provides for women's knit coats, capes and similar articles of man-made fibers containing 23% or more by weight of wool or fine animal hair. The duty rate will be 19.2% ad valorem plus 65.6 cents per kilogram.

The garment falls within textile category designation 435. As a product of Hong Kong, this merchandise is subject to quota and export licensing requirements based upon international textile trade agreements.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

If you have any questions regarding the ruling, contact Field Import Specialist Mary Franklin at 718-553-1630 or National Import Specialist Michael Crowley at 212-637-7077.

SUSAN T. MITCHELL,
Area Director,
JFK Airport.

[ATTACHMENT NN]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, March 22, 2001.

CLA-2-61:LA:S:T:1:2:123 G88233

Category: Classification

Tariff No. 6102:20:0010

MR. JAMES J. KELLY
BARTHO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of a woman's knitted coat from Hong Kong.

DEAR MR. KELLY:

In your letter dated February 27, 2001, on behalf of Jones Apparel Group USA, Inc., you requested a tariff classification ruling.

The submitted sample, style 11TD14178, is a woman's coat constructed from 100% cotton knit fabric. The garment extends from the shoulders to below mid-calf and features a hood, a full front opening with an eight-button closure and long sleeves with folded cuffs.

Your sample will be returned as requested.

The applicable subheading for the garment will be 6102.10.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoat * * * other than those of heading 6104: of cotton: women's. The rate of duty will be 16.2% ad valorem.

The garment falls within textile category designation 335. As a product of Hong Kong, this merchandise is subject to a visa requirement and quota restraints based upon international textile trade agreements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements that are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

VERA ADAMS,

Port Director,

Los Angeles-Long Beach.

[ATTACHMENT OO]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 12, 2001.
CLA-2-61:111 G86813
Category: Classification
Tariff No. 6102.10.0000

JAMES KELLY
BARTHCO
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of a woman's knitted coat from Hong Kong.

DEAR MR. KELLY:

In your letter dated February 22, 2001 you requested a tariff classification ruling on behalf of Jones Apparel Group USA, Incorporated. The sample will be returned.

Style 11TT24188 is a woman's knitted coat of 100% lambswool. The garment extends mid calf and features a hood, long sleeves and a belt.

The applicable subheading for the coat will be 6102.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats * * * knitted or crocheted, other than those of heading 6104, of wool or fine animal hair. The rate of duty will be 59.6 cents/kilo plus 17.5%.

The garment falls within textile category designation 435. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

JORGE L. FLORES,
*Port Director,
Norfolk, Virginia.*

[ATTACHMENT PP]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 14, 2001.
CLA-2-61:LA:S:T:1:2:123 G86712
Category: Classification
Tariff No. 6110.10.2080 and 6102.10.0000

MR. JAMES J. KELLY
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of women's sweater-like cardigan and coat from Hong Kong.

DEAR MR. KELLY:

In your letter dated January 25, 2001, on behalf of Jones Apparel Group USA Inc., you requested a tariff classification ruling.

The submitted samples, styles 15F571066 and 153A52938, are women's garments constructed from 100% knit merino boiled wool fabric. The surface of the fabric measures more the 9 stitches per 2 centimeters measured in the horizontal direction.

Style 15F571066 is a woman's sweater-like cardigan and features a shirt collar, a full frontal opening with a seven-button closure, long sleeves with hemmed cuffs, pockets below the waist and a hemmed straight bottom.

Style 153A52938 is a woman's knee-length coat and features a shawl collar, long sleeves with fold over cuffs, a full frontal opening with no means of closure, patched pockets at the waist and a hemmed bottom.

Your samples will be returned as requested.

The applicable subheading for style 15F571066 will be 6110.10.2080, Harmonized Tariff Schedule of the United States (HTS), which provides for sweaters knitted or crocheted: of wool or fine animal hair: other: women's or girls'. The rate of duty will be 16.3% ad valorem.

The applicable subheading for style 153A52938 will be 6102.10.0000, HTS, which provides for women's or girls' overcoats * * * other than those of heading 6104: of wool or fine animal hair: The rate of duty will be 59.6 cents per kilogram + 17.5% ad valorem.

Style 15F571066 falls within textile category designation 439 while style 153A52938 falls within category 435. As products of Hong Kong, these garments are subject to a visa requirement and quota restraints based upon international textile trade agreements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements that are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

VERA ADAMS,
Port Director,
Los Angeles-Long Beach.

[ATTACHMENT QQ]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, February 8, 2001.

CLA-2-61:K:TO:B7:I14 G86510

Category: Classification

Tariff No. 6102.10.0000

MR. JAMES J. KELLY
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of a woman's knit coat from Hong Kong.

DEAR MR. KELLY:

In your letter dated January 22, 2001, you requested a classification ruling on behalf of Jones Apparel Group located at 250 Rittenhouse Circle, Bristol, PA 19007.

Style number 119970695 is a woman's coat constructed from a 100% boiled wool knit fabric. The coat is ankle length and has a full-front opening with a single hook closure. Other features include a shawl collar, long sleeves with roll-up cuffs and two front pockets.

The applicable subheading for the garment will be 6102.10.0000, Harmonized Tariff Schedule of the United States, which provides for women's knitted coats of wool. The duty rate will be 17.5% ad valorem + 59.6 cents/kilogram.

The garment falls within textile category designation 435. As a product of Hong Kong, this merchandise is subject to quota and export licensing requirements based upon international textile trade agreements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

SUSAN T. MITCHELL,
Acting Area Director,
JFK Airport.

[ATTACHMENT RR]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
Los Angeles, CA, February 23, 2000.
CLA-2-61:LA:S:T:1:2:112 F83090
Category: Classification
Tariff No. 6102.10.0000 and 6110.10.2030

MR. JAMES J. KELLY
BARTHO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of women's knit garments from Hong Kong.

DEAR MR. KELLY:

In your letter dated February 10, 2000, on behalf of Jones Apparel Group USA, Inc., you requested a tariff classification ruling.

Style No. C21500538 is a woman's long coat constructed from 100% wool knit fabric with less than 9 stitches per 2 centimeters measured in the horizontal direction. The coat features a mandarin collar, a full frontal opening with six button closures, two front patch pockets at the hip, long hemmed sleeves, and a hemmed bottom.

Style No. C21760178 is a woman's sweater constructed from 100% wool knit fabric with less than 9 stitches per 2 centimeters measured in the horizontal direction. The sweater features a collar, a full frontal opening with five button closures, two front vertical inset pockets, long hemmed sleeves, and a hemmed bottom.

Your samples will be returned as requested.

The applicable subheading for the coat will be 6102.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's knit coats, of wool. The rate of duty will be 60.9 cents/kg + 17.8% ad valorem. The applicable subheading for the sweater will be 6110.10.2030, HTS, which provides for women's knit sweaters, of wool. The rate of duty for the sweater will be 16.4% ad valorem.

The coat falls within textile category designation 435. The sweater falls within textile category designation 446. As a product of Hong Kong, this merchandise is subject to a visa requirement and quota restraints based upon international textile trade agreements.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S.

Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.US-TREAS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

IRENE JANKOV,
Port Director,
Los Angeles-Long Beach Seaport.

[ATTACHMENT SS]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 6, 2000.
CLA-2-61:359:H:TC:CII:BJ:I28
Category: Classification
Tariff No. 6102.10.0000 and 6110.10.2030

MR. JAMES J. KELLY
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of a woman's wool knit coat and sweater from Hong Kong.

DEAR MR. KELLY:

This replaces the letter we sent you on March 20, 2000, under the same file number.

In your letter dated February 14, 2000, on behalf of your client, Jones Apparel Group USA, Inc., you requested a classification ruling.

Styles C1CN16228 and C1CN26378 are unlined and features a full frontal opening without closures; pockets below the waist; belt loops; and a detached self fabric tie belt.

Style C1CN16228 is a woman's 100% wool hand knit stripe coat which extends below the midhigh area and features long sleeves with a loose fitting rib ending and a shawl collar that extends to the rib hemmed bottom.

Style C1CN26378 is a woman's 60% merino wool/15% cashmere/15% angora/10% cable knit sweater constructed with nine or fewer stitches per two centimeters measured in the horizontal direction. The garment extends below the waist and features long sleeves with cuffs; and a shawl collar that extends to the rib bottom.

The applicable subheading for the coat will be 6102.10.0000, Harmonized Tariff Schedule of the United States (HTS) which provides for women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104: of wool or fine animal hair. The duty rate will be 60.9 cents per kilogram plus 17.8 percent ad valorem.

The applicable subheading for the sweater will be 6110.10.2030, Harmonized Tariff Schedule of the United States (HTS), which provides for sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of wool or fine animal hair: other, sweaters: women's. The duty rate will be 16.4 percent ad valorem.

Style C1CN16228 falls within textile category designation 435 and style C1CN26378 falls within textile category designation 446. Based upon international textile trade agreements, products from Hong Kong are subject to quota and the requirement of a visa.

The samples will be returned.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In

addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

PAUL RIMMER,
*Port Director,
Houston/Galveston.*

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF SILICOMANGANESE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letters and treatment relating to tariff classification of silicomanganese.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of silicomanganese, and to revoke any treatment Customs has previously accorded to substantially identical transactions. The merchandise is a chemical product, in granular form, containing certain percentages of silicon, manganese, iron, carbon, phosphorus and sulfur. It is used primarily as an alloying element in steel production. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before January 11, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke two rulings relating to the tariff classification of silicomanganese. Although in this notice Customs is specifically referring to two rulings, *HQ 089130* and *HQ 958783*, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In *HQ 089130*, dated August 14, 1991, a product identified as ferromanganese silicon was held to be classifiable in subheading 7202.99.50, HTSUS. This ruling was based on the belief that the merchandise was a ferroalloy of heading 7202, but was not described in a more specific sub-

heading of that heading. *HQ* 089130 is set forth as "Attachment A" to this document. For substantially the same reason, *HQ* 958783, dated May 9, 1996, classified a product identified as granular silicomanganese in bulk in subheading 7202.99.50, HTSUS. *HQ* 958783 is set forth as "Attachment B" to this document.

It is now Customs position that this merchandise is classifiable in subheading 7202.30.00, HTSUS, as ferrosilicon manganese. Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke *HQ* 089130 and *HQ* 958784, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in *HQ* 965325 and *HQ* 965326, which are set forth as "Attachment C" and "Attachment D" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: November 27, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, August 14, 1991.
CLA-2 CO:R:C:M 089130 AJS
Category: Classification
Tariff No. 7202.99.50

DISTRICT DIRECTOR
U.S. CUSTOMS SERVICE
PORT OF OGDENSBURG
127 North Water Street
Ogdensburg, NY 13669

Re: Protest number 0712-91-000043; ferromanganese silicon; Subheading 7202.99.50; Chapter 72, note 1(c); Subheading 7202.30.00; American Society for Testing and Materials A 701-74; Explanatory Note 72.02.

DEAR DISTRICT DIRECTOR:

Protest for further review number 0712-91-000043 dated 1/9/91, was filed against the classification of ferromanganese silicon within subheading 7202.99.50, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Facts:

The merchandise under protest is ferromanganese silicon. It contains approximately 62 percent of manganese (Mn), 31 percent of silicon (Si), and 6 percent of iron (Fe).

Issue:

Whether the subject ferromanganese silicon is properly classifiable within subheading 7202.30.00, HTSUSA, which provides for ferrosilicon manganese; or classifiable within subheading 7202.99.50, HTSUSA, which provides for other ferroalloys.

Law and Analysis:

Heading 7202, HTSUSA, provides for ferroalloys. These are described as "[a]lloys * * * containing by weight 4 percent or more of the element iron and one or more of the following: * * * more than 30 percent of manganese * * * more than 8 percent of silicon * * *". Chapter 72, note 1(c). The subject material satisfies this description. Accordingly, the subject ferromanganese silicon satisfies the terms of heading 7202, HTSUSA, and is properly classifiable therein.

Subheading 7202.30.00, HTSUSA, provides for ferrosilicon manganese. The protestant claims that the subject ferromanganese silicon satisfies the terms of this subheading. This claim is based on the fact that the subject ferromanganese silicon contains more than 30 percent of Mn and more than 8 percent of Si.

Since the term "ferrosilicon manganese" is not defined in the HTSUSA, it is proper to presume that Congress intended to apply its common and commercial meaning. *Lynteq, Inc. v. United States*, No. 90-04-00175, slip op. at 8 (Ct. Int'l Trade, June 17, 1991). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982). It is our understanding that ferrosilicon manganese is also known as silico-manganese. The Si chemical requirement for silico-manganese range from 12.5 percent to 21.0 percent. American Society for Testing and Materials (ASTM) A 483-64 (1974). The subject ferromanganese silicon does not satisfy this requirement. It contains approximately 31 percent Si. Accordingly, the subject ferromanganese silicon does not satisfy the commercial meaning of ferrosilicon manganese. Therefore, the subject ferromanganese silicon does not satisfy the terms of subheading 7202.30.00, HTSUSA, and is not classifiable therein.

The standard chemical requirements for ferromanganese silicon are 63 to 66 percent Mn and 28 to 32 percent Si. ASTM A 701-74 (1974). The chemical composition of the subject material closely resembles standard ferromanganese silicon. It contains approximately 62 percent Mn and 31 percent Si. In our view, the nearly identical composition of the subject material to that of standard ferromanganese silicon requires the same classification for each material. Ferromanganese silicon is not *eo nomine* provided for within heading 7202, HTSUSA. However, it does satisfy the terms of this heading. Subheading 7202.99.50, HTSUSA, provides for other ferroalloys. Since the subject ferromanganese silicon satisfies the terms of heading 7202, HTSUSA, but it is not provided for in any of the other subheadings of this heading, it is properly classifiable within subheading 7202.99.50, HTSUSA.

Holding:

The subject ferromanganese silicon is properly classifiable within subheading 7202.99.50, HTSUSA, which provides for other ferroalloys. You should deny the protest in full. A copy of this decision should be attached to the Customs Form 19, Notice of Action, and forwarded to the protestant.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, May 9, 1996.

CLA-2 RR:TC:MM 958783 JAS

Category: Classification

Tariff No. 7202.99.50

PORT DIRECTOR OF CUSTOMS

200 St. Paul Place

Baltimore, MD 21202

Re: PRD 1303-95-100066; Silicomanganese, Ferrosilicon Manganese, Subheading 7202.30.00; Other Ferroalloys, Subheading 7202.99.50; Commercial Designation, ASTM A 483, A 701; Chapter 72, Note 1(c), Chapter 72, Subheading Note 2; HQ 089130.

DEAR PORT DIRECTOR:

This is our decision on protest 1303-95-100066, filed against your classification of silicomanganese produced in Norway. The entries were liquidated on November 14, 1994, and January 27, 1995, and this protest timely filed on February 10, 1995. Counsel for protestant made additional arguments at a meeting in our office on March 26, 1996, which he confirmed in a submission, dated May 1, 1996.

Facts:

The merchandise is granular silicomanganese in bulk. It is a ferroalloy containing between 28-32 percent silicon, between 58-63 percent manganese, less than 10 percent iron, and minor amounts of carbon, phosphorous and sulfur, all by weight. It is used primarily as an alloying element in steel production.

The merchandise was entered under a provision in heading 7207, Harmonized Tariff Schedule of the United States (HTSUS), for ferrosilicon manganese. Your office determined that the product was a ferroalloy but not ferrosilicon manganese for tariff purposes. The entries were liquidated under a provision in HTS heading 7202 for other ferroalloys.

Counsel for the protestant maintains that under the Tariff Schedules of the United States (TSUS), the predecessor tariff code to the HTSUS, the term *ferrosilicon manganese* was defined in Schedule 6, Part 2, Subpart B, Headnote 2(e)(vii), which describes the instant merchandise. He concedes, however, that there is a change in definitional methodology under the HTSUS, so that ferrosilicon manganese is not specifically defined. Nevertheless, counsel maintains that because of the product's chemical composition it is within the term *Ferroalloys*, as defined in Chapter 72, Note 1(c), HTSUS. Furthermore, the product should be considered ternary for purposes of Chapter 72, Subheading Note 2, HTSUS, and classified in the appropriate subheading of heading 7202, if it exists. Counsel concludes that subheading 7202.30.00, HTSUS, a provision for ferrosilicon manganese, is such an appropriate ternary subheading. In fact, counsel maintains that other countries subscribing to the Harmonized System classify this merchandise in subheading 7202.30.00 as ferrosilicon manganese.

The provisions under consideration are as follows:

7202	Ferroalloys:	
	Ferromanganese:	
		* * * * *
	Ferrosilicon:	
		* * * * *
7202.30.00	Ferrosilicon manganese	* * * 3.9 percent ad valorem
	Other:	
7202.99	Other:	
7202.99.50	Other	* * * 5 percent ad valorem

Issue:

Whether the merchandise under protest is ferrosilicon manganese for tariff purposes.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in

part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRI 2 through 6.

The merchandise is described on commercial invoices as silicomanganese but is described on the Customs Form 7501 as "Ferroalloys; ferrosilcn mang." Where not defined in the text of the HTSUS, in applicable section or chapter notes, or in the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), tariff terms are construed according to their common and commercial meanings, which are presumed to be the same. The term "ferrosilicon manganese" is not defined in the tariff or in the ENs. However, it is our understanding that ferrosilicon manganese is also known as silicomanganese. See HQ 089130, dated August 14, 1991. American Society for Testing and Materials (ASTM) A-483 (1974) is a recognized specification for the ferroalloy silicomanganese. The manganese content for each of the three grades recognized in this specification is 65.0-68.0 percent, the silicon content is 12.5-21.0 percent, carbon 1.5-3.0 percent with trace amounts of phosphorus and sulfur, all by weight, with the remaining element being iron. Because the silicon content of the ferroalloy in this protest is significantly greater than that recognized in ASTM A-483, the merchandise is not within the common or commercial meaning of the term silicomanganese or ferrosilicon manganese.

ASTM A 701 (1974) is a specification for ferromanganesesilicon. The manganese content recognized in this specification is 63-66 percent, the silicon content is 28-32 percent, 0.76 percent phosphorus, arsenic, tin, lead and chromium, combined, all by weight, with the remainder being iron. The merchandise in this protest more closely conforms to the specification in ASTM A 701. However, because there is no subheading under heading 7202 for the ferroalloy ferromanganese-silicon, it is classifiable in subheading 7202.99.50, HTSUS. See HQ 089130.

Counsel notes that other countries subscribing to the Harmonized System designate the ferroalloy in issue having 16-20 percent silicon, by weight, as "standard" silicomanganese, and the same ferroalloy with 28-33 percent silicon, by weight, as "low carbon" silicomanganese; however, they classify both products in subheading 7202.30.00. As stated in T.D. 89-80, published in the Federal Register on August 23, 1989 (54 FR 35127), classification rulings from other Customs administrations are instructive only and are not binding on the United States. In this case, because we find that the merchandise under protest is within the common and commercial meanings of the term "ferromanganese-silicon," classification in subheading 7202.99.50 is appropriate.

Holding:

Under the authority of GRI 1, the merchandise designated silicomanganese is provided for in heading 7202. It is classifiable in subheading 7202.99.50, HTSUS.

The protest should be *DENIED*. In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you should mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and to the public via the Diskette Subscription Service, the Freedom of Information Act and other public access channels.

MARVIN AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965325 JAS
Category: Classification
Tariff No. 7202.30.00

EDWARD J. FARRELL
WIGMAN, COHEN, LEITNER & MYERS, PC.
900 17th St., N.W., Suite 1000
Washington, D.C. 20006

Re: HQ 958783 Revoked; Granular Silicomanganese.

DEAR MR. FARRELL:

In HQ 958783, which was issued to the Port Director of Customs, Baltimore, on May 9, 1996, in connection with Protest 1303-95-100066, filed on behalf of Pickands Mather Sales, Inc., granular silicomanganese was held to be classified in subheading 7202.99.50, Harmonized Tariff Schedule of the United States (HTSUS), as other ferroalloys. We have reconsidered this classification and now believe that it is incorrect. Because HQ 958783 was a protest review decision, liquidation of the involved entries will be unaffected by this decision.

Facts:

The merchandise in HQ 958783, granular silicomanganese in bulk, was described as a ferroalloy containing between 28-32 percent silicon, between 58-63 percent manganese, less than 10 percent iron, and minor amounts of carbon, phosphorous and sulfur, all by weight. It is used primarily as an alloying element in steel production.

The merchandise was entered under a provision in heading 7202, Harmonized Tariff Schedule of the United States (HTSUS), for ferrosilicon manganese. At liquidation, the product was determined to be a ferroalloy but not ferrosilicon manganese for tariff purposes. The entries were liquidated under a provision in HTS heading 7202 for other ferroalloys. You advanced several arguments in support of the entered classification: (1) the merchandise was within the term *ferrosilicon manganese*, defined under the HTSUS predecessor tariff code, the Tariff Schedules of the United States (TSUS), which is indicative of its intended classification under the HTSUS; (2) because of the product's chemical composition it is within the term *Ferroalloys*, as defined in Chapter 72, Note 1(c), HTSUS, and subheading 7202.30.00, HTSUS, a provision for ferrosilicon manganese, is an appropriate ternary subheading that describes the merchandise; (3) the term "ferrosilicon manganese" describes a product *eo nomine*, by name, and such provisions normally include all forms of the named article; and, finally (4) other countries subscribing to the Harmonized System designate the ferroalloy at issue having 16-20 percent silicon, by weight, as "standard" silicomanganese, and the same ferroalloy with 28-33 percent silicon, by weight, as "low carbon" silicomanganese; however, they classify *both* products in subheading 7202.30.

The HTSUS provisions under consideration are as follows:

7202	Ferroalloys:
	Ferromanganese:
*	* * * * *
	Ferrosilicon:
*	* * * * *
7202.30.00	Ferrosilicon manganese
	Other:
7202.99	Other:
7202.99.50	Other

Issue:

Whether the merchandise under protest is ferrosilicon manganese for tariff purposes.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRI). GRI 1 states in

part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRI 2 through 6.

Where not defined in a legal note under the HTSUS or clearly described in the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), tariff terms are construed in accordance with their common and commercial meanings which are presumed to be the same. While the merchandise at issue is clearly a ferroalloy for tariff purposes, the term "ferrosilicon manganese" is not defined in the legal text or in the ENs. Where a term is technical in nature, general lexicons may prove to be inconclusive in establishing its common meaning. In such cases, more specialized sources within the involved industry, to include testimony of persons with particular knowledge in the field, should be consulted. See *THK America v. United States*, 17 CIT 1169 (1993). At least two such sources independently confirm in affidavits that the term "ferrosilicon manganese" has no recognized commercial meaning, but is a general term that encompasses all alloys of iron, silicon and manganese that qualify as a ferroalloy under the HTSUS, and so includes both silicomanganese and ferromanganese silicon. The sources further indicate that in fact the latter two terms are used in practice and designate certain composition ranges for the alloy. Therefore, notwithstanding the fact that the silicomanganese at issue may not be strictly within American Society for Testing and Materials (ASTM) designation A-483 for the ferroalloy "silicomanganese," the referenced sources are equally probative of the common and commercial meaning of the term "ferrosilicon manganese."

As stated in T.D. 89-80, published in the Federal Register on August 23, 1989 (54 FR 35127), classification rulings from other Customs administrations on like merchandise are instructive only and are not binding on the United States. Nevertheless, such rulings are indicative of a classification we may wish to consider during our own rulings process. Five Customs administrations have recently responded to our inquiry on this classification issue and confirmed that they classify the ferroalloy silicomanganese in subheading 7202.30. In their responses, these administrations confirm that the terms ferromanganese silicon and silicomanganese are within the scope of the 7202.30 subheading designation "ferrosilicon manganese."

Upon consideration of all the available evidence, we conclude that the granular silicomanganese, the subject of HQ 958783, is within the common and commercial meaning of the term "ferrosilicon manganese" for tariff purposes.

Holding:

Under the authority of GRI 1, the merchandise designated silicomanganese is provided for in heading 7202. It is classifiable in subheading 7202.30.00, HTSUS. HQ 958783, dated May 9, 1996 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965326 JAS
Category: Classification
Tariff No. 7202.30.00

SHIELDALLOY METALLURGICAL CORP.

12 West Blvd.

P.O. Box 768

Newfield, NJ 08344-0768

Re: HQ 089130 Revoked; Ferromanganese Silicon.

GENTLEMEN:

In HQ 089130, which was issued to the District (now Port) Director of Customs, Ogdensburg, NY, on August 14, 1991, in connection with Protest 0712-91-000043, ferromanganese silicon was held to be classified in subheading 7202.99.50, Harmonized Tariff Schedule of the United States (HTSUS), as other ferroalloys. We have reconsidered this classification and now believe that it is incorrect. Because HQ 089130 was a protest review decision, liquidation of the involved entries will be unaffected by this decision.

Facts:

The merchandise in HQ 089130 was identified as ferromanganese silicon, presumably in bulk. It was described as containing approximately 62 percent manganese, 31 percent silicon and 6 percent iron. The merchandise was not further described. However, this material is used largely as an additive to the melt in steelmaking. As such, physical properties of the material in solid form, such as mechanical strength, are not a relevant consideration. Only the chemical composition of the material is of significance.

The merchandise was entered under a provision in heading 7202, Harmonized Tariff Schedule of the United States (HTSUS), a provision for ferrosilicon manganese. At liquidation, the product was determined to be a ferroalloy but not ferrosilicon manganese for tariff purposes. The entries were liquidated under a provision in HTS heading 7202 for other ferroalloys.

The HTSUS provisions under consideration are as follows:

7202	Ferroalloys:
	Ferromanganese:
*	*
	Ferrosilicon:
*	*
7202.30.00	Ferrosilicon manganese
	Other:
7202.99	Other:
7202.99.50	Other

Issue:

Whether the merchandise under protest is ferrosilicon manganese for tariff purposes.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Where not defined in a legal note under the HTSUS or clearly described in the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), tariff terms are construed in accordance with their common and commercial meanings which are presumed to be the same. While the merchandise at issue is clearly a ferroalloy for tariff purposes, the term "ferrosilicon manganese" is not defined in the legal text or in the ENs. Where a term is technical in nature, general lexicons may prove to be inconclusive in es-

tablishing its common meaning. In such cases, more specialized sources within the involved industry, to include testimony of persons with particular knowledge in the field, should be consulted. See *THK America v. United States*, 17 CIT 1169 (1993). At least two such sources independently confirm in affidavits that the term "ferrosilicon manganese" has no recognized commercial meaning, but is a general term that encompasses all alloys of iron, silicon and manganese that qualify as a ferroalloy under the HTSUS, and so includes both silicomanganese and ferromanganese silicon. The sources further indicate that in fact the latter two terms are used in practice and designate certain composition ranges for the alloy. Therefore, notwithstanding the fact that the silicomanganese at issue may not be strictly within American Society for Testing and Materials (ASTM) designation A-483, for the ferroalloy "silicomanganese," the referenced sources are equally probative of the common and commercial meaning of the term "ferrosilicon manganese."

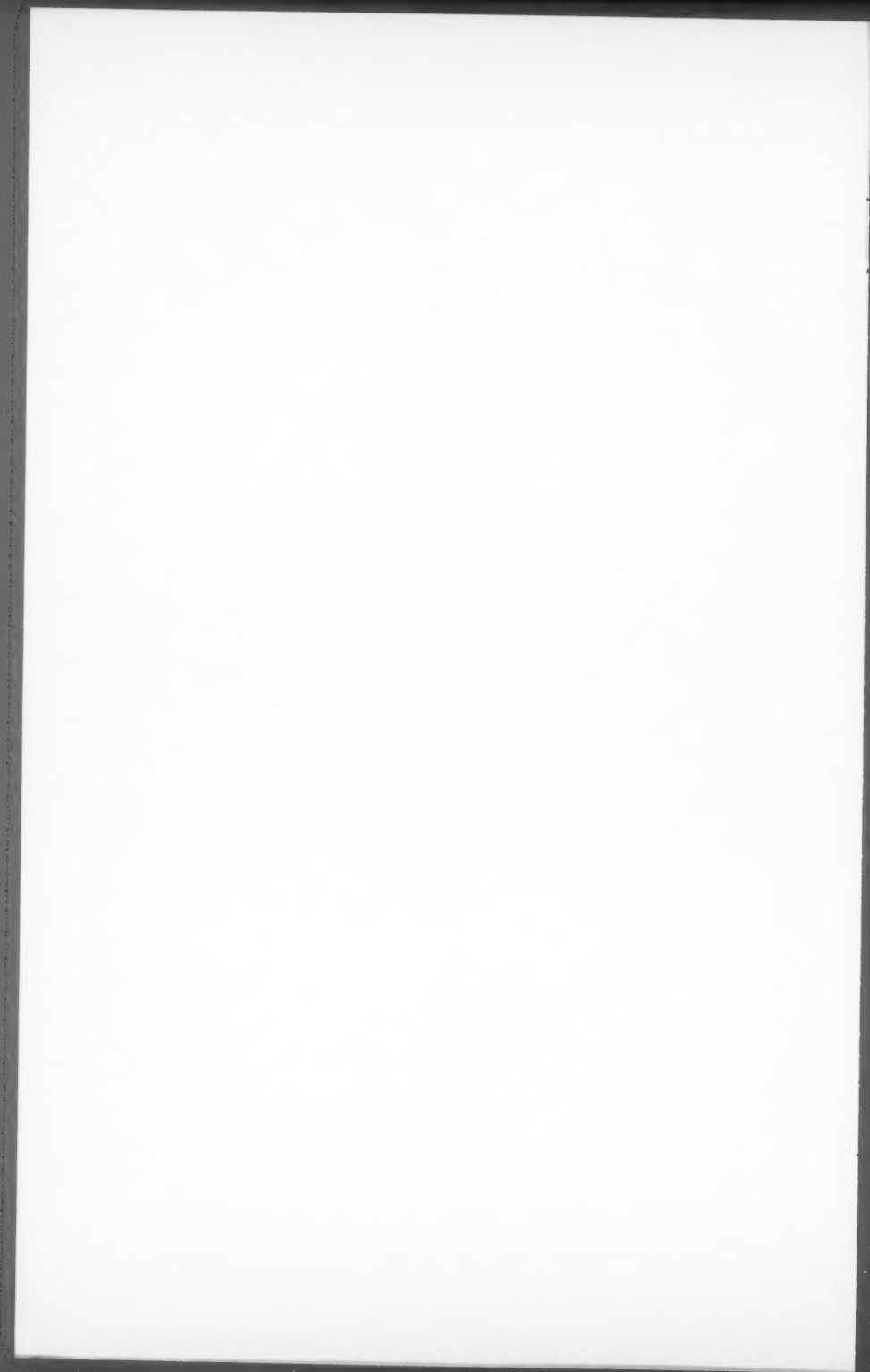
As stated in T.D. 89-80, published in the Federal Register on August 23, 1989 (54 FR 35127), classification rulings from other Customs administrations on like merchandise are instructive only and are not binding on the United States. Nevertheless, such rulings are indicative of a classification we may wish to consider during our own rulings process. Five Customs administrations have recently responded to our inquiry on this classification issue and confirmed that they classify the subject merchandise in subheading 7202.30. In their responses, these administrations confirm that the terms ferromanganese silicon and silicomanganese are within the scope of the 7202.30 subheading designation "ferrosilicon manganese."

Upon consideration of all the available evidence, we conclude that ferromanganese silicon, the subject of HQ 089130, is within the common and commercial meaning of the term "ferrosilicon manganese" for tariff purposes.

Holding:

Under the authority of GRI 1, the merchandise designated ferromanganese silicon is provided for in heading 7202. It is classifiable in subheading 7202.30.00, HTSUS. HQ 089130, dated August 14, 1991, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.



United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach

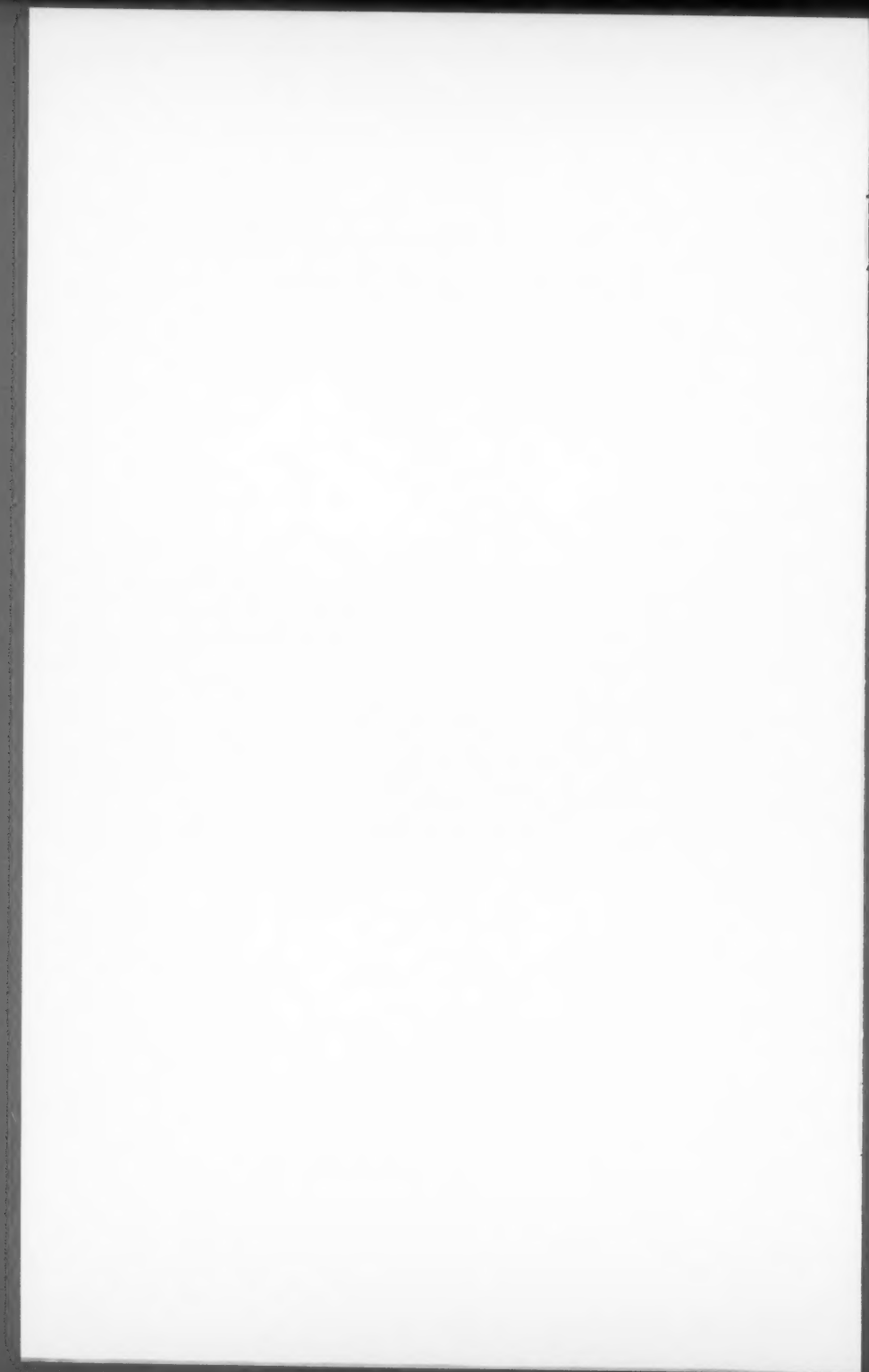
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

Herbert N. Maletz
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon



Decisions of the United States Court of International Trade

[PUBLIC VERSION]

(Slip Op. 01-127)

FORMER EMPLOYEES OF BARRY CALLEBAUT, PLAINTIFF *v.*
HERMAN, U.S. SECRETARY OF LABOR, DEFENDANT

Court No. 00-05-00202

[Remand Determination remanded for further investigation.]

(Decided November 2, 2001)

Coudert Brothers (Steven H. Becker, Scott D. Schauf, and Paul A. Horowitz), New York, NY, for Plaintiffs.

Stuart E. Schiffer, Acting Assistant Attorney General; *David Cohen*, Director; *elita A. elnbrencis*, Assistant Director, U.S. Department of Justice, Civil Division, Commercial Litigation Branch, (*Franklin E. White, Jr.*), Washington, D.C., for Defendant.

OPINION

I

INTRODUCTION

WALLACH, *Judge*: This case is before the court following the United States Department of Labor's ("Labor" or the "Department") voluntary remand of January 31, 2001. Plaintiffs, Former Employees of Barry Callebaut ("Former Employees") filed petitions for transitional adjustment assistance ("TAA") and NAFTA transitional adjustment assistance ("NAFTA TAA"). Following the voluntary remand, Labor denied Plaintiffs' eligibility for both programs. *Barry Callebaut USA, Incorporated, an Leer Division, Jersey City, New Jersey; Notice of Negative Determination on Remand* ("Remand Determination"), 66 Fed. Reg. 18116 (Dep't Labor, Apr. 5, 2001). For the reasons set forth below, the *Remand Determination* is remanded to Labor for further investigation.

II

BACKGROUND

Barry Callebaut Van Leer Division (the "plant") was a manufacturing plant in Jersey City, New Jersey, which produced finished chocolate

products and related ingredients. See Plaintiffs' Comments on Defendant's Negative Determination on Remand ("Plaintiffs' Comments") at 4 (listing the products as including, but not limited to, cocoa butter, chocolate liquor, sugar-free chocolate and chocolate snaps). The plant began laying off employees in late Spring 1999 and closed in April 2000. See *id.* at 4-5.

On July 9, 1999, employees who were slated for lay off applied for TAA, claiming that their previous employer Van Leer was bought by Barry Callebaut (the "company"), and that Barry Callebaut was shifting production to Canada, resulting in their separations. Confidential Administrative Record at 5; see also Plaintiffs' Comments at 5; Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance, 64 Fed. Reg. 65728 (Dep't Labor, Nov. 23, 1999).

On August 12, 1999, after having been laid off, the employees filed a petition for NAFTA TAA. They claimed that the lay offs resulted from shifts in production to and imports from Canada. Administrative Record—Business Confidential Information Supplemental ("Adm. Rec. I") at 1; see also Plaintiffs' Comments at 5; *Investigations Regarding Certifications of Eligibility to Apply For NAFTA Transitional Adjustment Assistance*, 64 Fed. Reg. 55757 (Dep't Labor, Oct. 14, 1999).

Labor initiated an investigation in which it sent a NAFTA TAA Confidential Data Request Questionnaire ("NAFTA TAA Questionnaire") to Barry Callebaut. See Plaintiffs' Comments at 5. It obtained questionnaire responses dated October 15, 1999, from the company's Human Resources Manager. Adm Rec. I at 8-14; see Plaintiffs' Comments at 5; Defendant's Memorandum in Opposition to Plaintiffs' Comments on Defendant's Negative Determination on Remand ("Defendant's Response") at 3. In its response, the company stated that there was no recent decline in production or increase in imports, and that no shift of production to Canada was planned. Adm Rec. I at 9; see Plaintiffs' Comments at 6; Defendant's Response at 3. Two weeks later, on October 25, 1999, in response to Labor's inquiry about a decline in production at the plant, the company said that production was being shifted to other domestic plants. Adm Rec. I at 16-17; see Plaintiffs' Comments at 6; Defendant's Response at 4.

Labor relied upon the company's unverified questionnaire responses in denying the petitions for TAA and NAFTA TAA. Adm Rec. I at 18-22; see Plaintiffs' Comments at 6-7; Defendant's Response at 4; see also *Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance*, 64 Fed. Reg. 72690, 72691 (Dep't Labor, Dec. 28, 1999) (stating that the TAA claim was denied for failure to meet the criterion of an "increase[] of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision hav[ing] contributed importantly to the separations"); *Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance*, 65 Fed. Reg. 5690, 5691 (Dept' Labor, Feb. 4, 2000)

(stating that the NAFTA TAA claim was denied because "[i]mports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.").

On January 13, 2000, one of the Former Employees, Robert Bloom, requested that Labor reconsider its negative determination. He claimed that 30% or more of production from the plant had been shifted or was in the process of being shifted to Canada, and that equipment was being dismantled and sent to Canada. Adm Rec. I at 40-41; Plaintiffs' Comments at 7. Labor granted his request. *Barry Callebaut, USA, Incorporated an Leer Division Jersey City, New Jersey; Notice of Affirmative Determination Regarding Application for Reconsideration*, 65 Fed. Reg. 5690 (Dep't Labor, Feb. 4, 2000).

The Department then initiated a second investigation. It sent a letter on January 24, 2000, to the Human Resources Manager requesting additional information. Adm Rec. I at 46-47. The letter laid out Plaintiffs' claims as made in the request for reconsideration. Labor's first question was, "We ask that you respond to the petitioners claims." *Id.* at 46. In its February 16, 2000, submission, the company did not respond to this question. *Id.* at 51. The remaining questions related to production shifts to and imports from Canada and other foreign countries. *Id.* at 46-47. Labor stated that "[t]he company has responded that it expects to shift some production from Jersey City to Canada in the near future, but to date, no shift has occurred." *Barry Callebaut USA, Incorporated, an Leer Division, Jersey City, New Jersey; Notice of Negative Determination on Reconsideration ("Reconsideration Determination")*, 65 Fed. Reg. 13991 (Dep't Labor, Mar. 15, 2000). The company stated that it "did not import any chocolate products or ingredients from Canada" and that "except for cocoa powder, the company did not import any chocolate product or ingredients from any other foreign country." Defendant's Response at 7. This information, like the information from the first investigation, was sent by the Human Resources Manager. *See id.* Without verifying his response, Labor affirmed its negative determination. *See id.*; *Reconsideration Determination*, 65 Fed. Reg. at 13991.

Mr. Bloom then filed this suit on behalf of the Former Employees. After Defendant answered, Plaintiffs filed a Motion for Judgment on the Agency Record. In response, Defendant filed a Motion for a Voluntary Remand "for the purpose of allowing the agency to conduct an additional investigation and to make a redetermination as to whether petitioners qualify for certification for" TAA and/or NAFTA TAA. Defendant's Motion for Voluntary Remand at 2.

Labor then initiated a third investigation. On February 12, 2001, it requested detailed information from the Accounting Manager of Barry Callebaut, USA, Inc. regarding the organizational structure of the company; the products produced at the Jersey City plant; where production and machinery were shifted once the plant closed; sales, production and

imports for each product produced; and the plant's major customers.¹ Adm Rec. II at 3. Labor also asked the company to "provide comments or documentation that would contradict the Department's negative determination" as to worker eligibility. *Id.* at 4. Labor's request was forwarded to Ms. Isabelle Eysseric, who appears to be the company Spokesperson,² and she responded on February 26, 2001.³ According to a chart she submitted, only [a very small percentage] of the Jersey City plant's production was transferred to the plant at St. Hyacinthe, Quebec, Canada. *Id.* at 41. The submission indicates that all other production was transferred to other domestic plants. *Id.*

Based upon the unverified information provided by Ms. Eysseric, Labor found that "[a] negligible amount of" production of products formerly produced at the plant "was shifted to Canada." *Remand Determination*. The three ingredient products produced at the Jersey City plant were chocolate liquor, cocoa butter and cocoa cake. Supplemental Confidential Administrative Record at 42. Labor found that imports of chocolate liquor were negligible, purchases of chocolate cake increased but domestic production also increased significantly, and imports of cocoa butter accounted for a "negligible portion of the company's domestic needs." *Remand Determination*. The finished products made at the plant were chocolate, sugar-free chocolate and chocolate snaps, and the Department found that the "vast majority" of production of these items "was shifted to other Barry Callebaut domestic locations." *Id.* Based on these findings, Labor affirmed its previous determinations and denied the petitions for TAA and NAFTA TAA. *Id.*

The Motion presently before the court followed. Plaintiffs challenge the denials of their petitions, claiming that Labor conducted an inadequate investigation. Plaintiffs' Comments at 1-2. They argue that Labor failed to "perform a reasoned analysis" of the record evidence, failed to inquire into contradictory information in the record, and "reached material conclusions for which there is no supporting evidence in the administrative record". *Id.*

III

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction under 28 U.S.C. § 1581(d) (1994). This case is governed by 19 U.S.C. § 2272 (1994) and 19 U.S.C. § 2395 (1994). 19 U.S.C. § 2272 provides for separated workers to petition for TAA. 19 U.S.C. § 2272 (1994). 19 U.S.C. § 2395 provides for the petitioning by dis-

¹ In its letter requesting additional information, Labor stated that it asked for the remand "so that [it] could satisfy the inadequacies of the [earlier] investigation. Adm Rec. II at 2.

² Ms. Eysseric's title is not specified in the record. However, in the table of contents to the remand record provided by Defendant, Ms. Eysseric is referred to as Spokesperson.

³ Labor also contacted Mr. Woody Forns, the former Chief Financial Officer for Van Leer and the company contact person listed on the original petition. See *Remand Determination*. By the time Labor contacted him in this third investigation, Mr. Forns had been separated from the company for "about two years". Adm Rec. II at 51. The memorandum on the record memorializing the certifying officer's conversation with him states that Mr. Forns indicated that "only a small percentage" of chocolate and ingredient production from the Jersey City plant was transferred to Canada, but that the cocoa press and the production for which it is used "probably went to Canada". *Id.* Labor characterized the information provided by Mr. Forns as not new. *Remand Determination*.

placed workers for NAFTA TAA and judicial review of Labor's determination on such petitions. 19 U.S.C. § 2395 (1994). That section also provides that the court, "for good cause shown * * * may remand the case to [Labor] to take further evidence." *Id.* "Good cause exists if the Secretary's chosen methodology is so marred that his finding is arbitrary or of such a nature that it could not be based on substantial evidence." *Former Employees of Linden Apparel Corp. v. United States*, 13 CIT 467, 469, 715 F. Supp 378, 381 (CIT 1989) (citations and internal punctuation omitted).

"A negative determination by the Secretary of Labor denying certification of eligibility for [TAA] will be upheld if it is supported by substantial evidence on the record and is otherwise in accordance with law." *Former Employees of Swiss Ind. Abrasives v. United States*, 17 CIT 945, 947, 830 F. Supp 637, 639 (1993); *see also* 19 U.S.C. § 2395(b) (1994). Substantial evidence is something more than a "mere scintilla," and must be enough evidence to reasonably support a conclusion. *Primary Steel, Inc. v. United States*, 17 CIT 1080, 1085, 834 F. Supp. 1374, 1380 (1993); *Ceramica Regiomontana, S.A. v. United States*, 10 CIT 399, 405, 636 F. Supp. 961, 966 (1986), *aff'd*, 810 F.2d 1137 (Fed. Cir. 1987).

IV

ANALYSIS

A

LABOR ERRED IN ACCEPTING BARRY CALLEBAUT'S UNVERIFIED QUESTIONNAIRE RESPONSE BECAUSE IT FAILED TO ANALYZE CONTRADICTORY EVIDENCE THAT SUGGESTED THE COMPANY'S RESPONSE WAS LESS THAN TRUTHFUL.

Plaintiffs claim that although Labor conducted three investigations on this matter, "it still has failed to produce substantial evidence that would support denial of Plaintiffs' claims for certification." Plaintiffs' Comments at 13. "Labor's investigation [on remand] did not meet the threshold requirement of reasonable inquiry", Plaintiffs claim, because "Labor blindly accepted, without any verification or follow-up, the scant information provided by [Barry Callebaut]." *Id.*

Defendant claims that "[i]t is entirely appropriate for the Secretary of Labor to accept—without verification—statements received from company officials when nothing in the record suggests that the information provided is inaccurate or unreliable." Defendant's Response at 12. In support of its contention, Defendant cites *Local 167, Int'l older and Allied Workers' Union, AFL-CIO v. arshall*, 643 F.2d 26 (1st Cir. 1981). In *Local 167*, the court upheld Labor's negative TAA determination which was based largely on an unverified statement from the subject company. The plaintiff argued that accepting the statement was an abuse of discretion. In upholding Labor's determination, the court stated that

We cannot say, however, that the Secretary has shirked his duty to investigate by accepting as credible an authoritative company re-

sponse to an official query given under a guarantee of confidentiality. The duty of verification proposed by petitioner, which is applicable to customer surveys generally, would greatly increase the investigative burden of the Department of Labor. We note that *there are not objective circumstances in this case suggesting that the company gave a less than truthful response*, nor does it appear that the company would have financially benefitted from the denial of certification. It was for the Secretary to decide, under these circumstances, whether to credit the Crane Company statement without further checking.

Local 167, 643 F.2d at 31-32 (emphasis added).

Local 167 does not support the Government's position that it did not need to verify the information provided by Barry Callebaut. Information that Labor should have considered suggested that the company's figures were less than truthful.

In responding to Labor's questionnaire on February 26, 2001, Barry Callebaut submitted a chart titled "Ex-Van Leer Items—Allocation of Production Per Site Since the Close of Van Leer Factory". The chart, which covers the period of April 17, 2000 to January 27, 2001, lists four factories as producing 100% of the former Van Leer volume. The factories [producing a proportion of chocolate and ingredients are:]

St. Hyacinthe, Quebec, Canada – [a proportion]%

St. Albans, Vermont, USA – [a proportion]%

Pennsauken, New Jersey, USA – [a proportion]%

Piscataway, New Jersey, USA – [a proportion]%

Adm Rec. II at 41. Based on this information provided by the company, in the *Remand Determination*, Labor found that production of only a "negligible amount" of the articles produced at the Jersey City plant was moved to Canada. *Remand Determination*.

However, the company's 1999 Annual Report indicates that far more than [a very small percentage] of Van Leer production was moved from Jersey City to Canada. In the Report, Barry Callebaut stated in its Letter From the Management that it had implemented changes to increase efficiency. "An example of efficiency improvements within our Group is the transfer of the higher cost Van Leer U.S. production to more cost-efficient sites in Pennsauken (USA) and St. Hyacinthe (Canada). As a result, the Van Leer factory has been closed." Barry Callebaut, Inc., 1999 Annual Report at 9 ("Annual Report").

The chart provided by the company and its Annual Report appear to be at odds. If the Pennsauken plant took over [the bulk] of the Jersey City plant's production, and St. Albans took over [an additional amount greater than St. Hyacinthe], then the question arises, why does the Annual Report list St. Hyacinthe, with only [a very small percentage] of the production, and not St. Albans? The statement in the Annual Report appears intended to show where the production has gone once the Jersey City plant closed. The fact that the company listed St. Hyacinthe implies that it and the Pennsauken plant took over the major portion of production. If indeed the St. Hyacinthe plant only took over [a very

small percentage] of production, and the St. Albans plant took over [a greater percentage than St. Hyacinthe], it would seem only logical that the Annual Report would list St. Albans and not St. Hyacinthe. Alternatively, the Annual Report would list all four plants. In any case, the apparent discrepancy between the Annual Report and the submission to Labor suggests that the company was less than truthful in its submission.⁴

The Department having failed to analyze the Annual Report and investigate the apparent discrepancies between it and Barry Callebaut's submission to Labor, the court finds good cause to remand this determination to Labor. The Department's acceptance of the unverified information provided by the company, despite the contradictory evidence presented, renders the Remand Determination unsupported by substantial evidence. This matter is remanded to Labor for further investigation into the amount of production which was moved from Jersey City, New Jersey, USA to St. Hyacinthe, Quebec, Canada. Following the factual investigation, Labor is to reevaluate whether sufficient production was relocated to Canada to satisfy the requirements of TAA and NAFTA TAA.

B

THE DE MINIMIS RULE APPLIES TO 19 U.S.C. § 2331 BECAUSE TO EXEMPT THE NAFTA TAA PROGRAM FROM THE DE MINIMIS RULE WOULD THWART THE PURPOSE OF THE PROGRAM.

Plaintiffs claim that even if Labor is correct and only [a very small percentage] of production was shifted to Canada, the workers should have been certified eligible for NAFTA TAA. Plaintiffs' Comments at 20. 19 U.S.C. § 2331, which sets forth the eligibility requirements for NAFTA TAA, states in relevant part:

(a) Group eligibility requirements

(1) Criteria

A group of workers * * * shall be certified as eligible to apply for adjustment assistance under this subpart * * * if the Secretary determines that a significant number or proportion of the workers in such workers' firm * * * have become totally or par-

⁴ If the company was truthful in its submission to the Department, then it appears that it may have been untruthful in its Annual Report. If upon remand, Labor finds that [the production figure specified for St. Hyacinthe] is the accurate figure, Labor is directed to refer this matter to the Securities and Exchange Commission for investigation into whether a misrepresentation was made to shareholders in the Annual Report.

The Securities and Exchange Commission requires publicly traded companies to file annual reports. 17 C.F.R. § 240.13a-1 (2001). Making a material misrepresentation of fact or materially misleading statement in an annual report to shareholders results in issuer liability. 17 C.F.R. § 240.3b-6(d) (2001) (titled "Liability for Certain Statements By Issuers" and stating that a fraudulent statement is one "which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading * * *"); 17 C.F.R. § 240.3b-6(b) (2001) (applying subsection (d) to annual reports to shareholders); 17 C.F.R. § 240.14a-3 (2001) (detailing requirements of annual report); 17 C.F.R. § 240.10b-5 (2001) (it is unlawful to "make any untrue statement of material fact * * * in connection with the purchase or sale of any security"); 17 C.F.R. § 240.12b-20 (2001) (requiring a company to include in a statement or report "further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading."); *see also* Securities & Exchange Commission v. General Refractories Co., 400 F. Supp. 1248, 1257 (D.D.C., 1975) ("Investors are entitled to disclosure of material facts. * * * The Commission has made a prima facie showing that annual reports and proxy materials filed with the Commission and disseminated to * * * shareholders were false and misleading and did not contain information required to be contained therein.").

tially separated, or are threatened to become totally or partially separated, and either—

(A) that—

(i) the sales or production, or both, of such firm or subdivision have decreased absolutely,

(ii) imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and

(iii) the increase in imports under clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(B) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

19 U.S.C. § 2331 (1994).

Plaintiffs argue that "[t]he statute, which is clear and unambiguous, directs Labor, *without qualification*, to certify the workers if it determines that there has been a shift in production to Canada of articles like or directly competitive with articles that are produced by the workers' firm in the United States." Plaintiffs' Comments at 20. In other words, "[n]o minimum level [of shifted production] is required." *Id.*

Plaintiffs' argument "ignores the fact that the venerable maxim *de minimis non curat lex* ('the law cares not for trifles') is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992). "Application of *de minimis* is particularly important in cases * * * where stark, all-or-nothing operation of the statutory language would have results contrary to its underlying purposes." *Alcan Aluminum Corporation v. United States*, 165 F.3d 898, 903 (Fed. Cir. 1999).

The legislative history behind NAFTA TAA shows that the program is intended to benefit displaced workers whose separations were caused by shifts in production to or imports from Canada or Mexico. *See* H.R. Rep. No. 103-361(I) at 4 (1993), *reprinted in* 1993 U.S.C.C.A.N. 2552, 2554 ("Title V establishes a NAFTA transitional adjustment assistance program of comprehensive benefits, including training and income support, for workers who may be laid off *due to* increased U.S. imports from Mexico or Canada or a shift of production to Mexico or Canada, and authorizes State self-employment assistance programs.") (emphasis added). The program is not intended to benefit workers whose separations were not *caused by* shifts in production to or imports from Canada or

Mexico, despite the fact that *some* production may have been shifted or imports may have increased to some degree.⁵

If courts do not apply the de minimis rule to the NAFTA TAA program, Labor will be required to certify workers eligible for NAFTA TAA in situations where no causal link can be made between the production shift and the separations. As this would clearly circumvent the purpose of NAFTA TAA, Plaintiffs' argument fails.

C

SHOULD LABOR NOT PERFORM A COMPETENT AND VERIFIED INVESTIGATION UPON REMAND. THE COURT WILL NOT REMAND FOR A FIFTH INVESTIGATION.

Plaintiffs argue that "Labor has now had three opportunities to perform a proper investigation—and have failed each time." Plaintiffs' Comments at 13–14. Therefore, they argue that "further remand would * * * be futile" and that "the Court should order Labor to certify the plaintiffs as eligible for trade adjustment assistance." *Id.* at 14.

Plaintiffs rely on *Former Employees of Hawkins Oil and Gas, Inc. v. United States Secretary of Labor*, 17 CIT 126, 814 F. Supp. 1111 (1993). Plaintiffs' Comments at 14, 20. In that case, Labor had conducted three investigations on the petitions for trade adjustment assistance. The court found that the investigations were inadequate. In ordering the Secretary to certify the workers, the court stated that "Labor has repeatedly ignored the Court's instructions to conduct a more thorough investigation. After three tries the record continues to be scant and Labor has once again failed to substantiate its conclusions. Thus, ordering another remand in this case would be futile." *Hawkins Oil*, 17 CIT at 130, 814 F. Supp. at 1115.

Plaintiffs' argument has merit. In its three opportunities, Labor has failed to conduct adequate investigations in this case. However, the court finds that remand with instructions from the court is appropriate. Labor is instructed to conduct a competent and thorough investigation, and given the evidence that Barry Callebaut has been less than truthful in its responses to Labor questionnaires, the Department must verify the company's responses. Obtaining a sworn statement from the company official who prepares the responses to Labor's questions is not sufficient verification. Labor's failure to conduct an adequate investigation in accordance with these instructions will be taken as indicative that the Department does not care to perform its duties competently, and the court will not remand for a fifth investigation.

⁵ The court notes that Congress requires a "significant number or proportion of the workers" be displaced in order for them to be eligible for NAFTA TAA. 19 U.S.C. § 233a (a)(1); H.R. Rep. No. 103-361(I) at 88 (1993), *reprinted in* U.S.C.A.N. 2552, 2638. On its face this requirement indicates that Congress requires something more than one worker being displaced. As to this aspect of the statute, Congress has adopted, or at the very least has implicitly not rejected, the de minimis principle. This requirement supports the conclusion that Congress also adopts, or does not reject, the de minimis principle as to the other condition for NAFTA TAA, that production be shifted to Canada or Mexico.

V

CONCLUSION

This matter is remanded to Labor for further investigation and consideration of the amount of production shifted to Canada from the United States. Specifically, Labor is instructed to investigate the claims made in the chart titled "Ex-Van Leer Items—Allocation of Production Per Site Since the Close of Van Leer Factory", submitted to Labor by Barry Callebaut, and how they conflict with the statements made in the Annual Report. As noted above, should the Department find that the statement made in the chart is truthful, it is instructed to refer this matter to the Securities and Exchange Commission.

(Slip Op. 01-135)

TORRINGTON CO., PLAINTIFF AND DEFENDANT-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND KOYO SEIKO CO., LTD., KOYO CORP. OF U.S.A., NTN CORP., NTN BEARING CORP. OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP., NTN DRIVESHAFT, INC., NTN-BOWER CORP., AND NTN-BCA CORP., DEFENDANT-INTERVENORS AND PLAINTIFFS

Consolidated Court No. 99-08-00462

(Dated November 26, 2001)

ORDER

TSOUCALAS, *Senior Judge*: This Court has received and reviewed the United States Department of Commerce, International Trade Administration's ("Commerce") *Final Results of Redetermination Pursuant to Court Remand ("Remand Results")* for *Torrington Co. v. United States ("Torrington")*, 25 CIT ___, 146 F. Supp. 2d 845 (2001). In *Torrington*, this Court: (a) denied in part and granted in part USCIT R. 56.2 motions by Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. (collectively "Koyo") and NTN Corporation, NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Driveshaft, Inc., NTN-Bower Corporation and NTN-BCA Corporation (collectively "NTN") and denied USCIT R. 56.2 motion by The Torrington Company ("Torrington"); and (b) remanded this case to Commerce to: (1) annul all findings and conclusions made pursuant to the duty absorption inquiry conducted for this review, *Torrington*, 25 CIT at ___, 146 F. Supp. 2d at 858; (2) articulate what methodology Commerce used in conducting the arm's length test, *id.*, 25 CIT at ___, 146 F. Supp. 2d at 871; (3) clarify what action Commerce took with respect to inputs that NTN obtained from affiliated parties, *id.*, 25 CIT at ___, 146 F. Supp. 2d at 869; and (4) explain Commerce's decision concerning NTN's packing ex-

penses. *Id.*, 25 CIT at ___, 146 F. Supp. 2d at 885. With respect to the fourth issue, this Court specifically explained that

[d]uring the prior reviews, Commerce re-allocated NTN's packing expenses. During the review in issue, however, Commerce examined and denied NTN's packing expenses. Commerce found NTN's allocation of home market packing expenses distortive because NTN's allocation allegedly did not take into account the differences in packing to different customers. Additionally, Commerce disallowed the claimed adjustment for home market packing expenses because NTN allegedly did not revise its methodology when Commerce requested such a revision. Issuing its final determination, Commerce stated that Commerce applied partial adverse facts available, and yet Commerce also stated that Commerce denied the adjustment. NTN contends that Commerce's treatment of NTN's home market packing expenses, specifically: (1) Commerce's denial of packing expenses; and (2) *Commerce's application of facts available and adverse inference to NTN's home market packing expense, was not in accordance with the law.* Because Commerce's explanation of the action which it took is not clear, the Court remands *[both parts of the]* issue to Commerce for explanation of its final decision concerning NTN's packing expenses.

Id. (internal citations omitted, emphasis supplied).

Commerce complied with the Court's remand with respect to the first three issues. See *Remand Results* at 2-7. Furthermore, addressing the fourth issue in the *Remand Results*, Commerce agreed that "[Commerce's] statement that [Commerce] applied partial adverse facts available with regard to home-market packing expenses was in error." Commerce restated that, in fact, Commerce "denied the expense in its entirety because [Commerce] found that NTN's allocation methodology was distortive * * *." *Remand Results* at 7. Commerce, therefore, clarified its position only with respect to the first prong of the fourth issue, that is, incoherence of Commerce's statements, while failing to address the second prong, that is, the reasons for Commerce's denial of NTN's packing expenses.

Consequently, in its response to the *Remand Results*, NTN acknowledges that Commerce "denied NTN any adjustment for packing expenses in the home market[] because [Commerce] was dissatisfied with NTN's [reporting] methodology." NTN's Resp. ITA's Letter of Aug. 9, 2001, at 2. NTN, however, contends that Commerce could have "reallocated the expense as [Commerce] did in subsequent reviews." *Id.* Thus, NTN's contention effectively parallels the Court's request to Commerce to explain why "Commerce's application of facts available and adverse inference to NTN's home market packing expense[] was not in accordance with the law." *Torrington*, 25 CIT at ___, 146 F. Supp. 2d at 885. While the Court does not necessarily agree with NTN that Commerce erred in Commerce's decision not to reallocate the expense in the fashion utilized by Commerce in other reviews, the Court holds that Commerce failed to address the particular issue in the *Remand Results*.

Indeed, a substantial deficiency in NTN's reported data allows Commerce to deny an adjustment. Commerce's power, however, is not unconditional or free of exceptions. It may be that Commerce can justify its refusal to reallocate the expense at issue as Commerce did in other reviews, but it may be that Commerce cannot do so.

The only explanation provided by Commerce so far was the statement that "Commerce[:] (1) found NTN's allocation of home market packing expenses distortive because [NTN] did not take into account the differences in packing to different customers; and (2) disallowed the claimed adjustment * * * because NTN did not revise [NTN's] methodology when Commerce requested such revision." Def.'s Mem. Partial Opp'n Plts.' Mot. J. Agency R. at 90. This explanation is insufficient because it is silent on the following issues: (1) why Commerce could not reallocate the expenses; (2) how distortive was the data supplied by NTN; (3) whether the revisions to NTN's methodology requested by Commerce were given to NTN in a timely manner, that is, so NTN could comply with the request; and (4) whether the adjustment to NTN's methodology required by Commerce was reasonable and feasible to NTN. If the Court is to play its statutorily required role in reviewing Commerce's determination, it is important that the Court has clear guidance from Commerce as to what was actually happening.

Therefore, this case having been duly responded and commented to, and the Court, after due deliberation, having rendered a decision herein; now, in accordance with said decision, it is hereby

ORDERED that this case is remanded to Commerce so Commerce would clarify its final decision concerning its denial of NTN's packing expenses; and it is further

ORDERED that the remand results are due within ninety (90) days of the date that this order is entered. Any responses or comments are due within thirty (30) days thereafter. Any rebuttal comments are due within fifteen (15) days after the date the responses or comments are due.

(Slip Op. 01-136)

NTN BEARING CORP. OF AMERICA, NTN KUGELLAGERFABRIK (DEUTSCHLAND) GMBH, SKF USA INC., SKF GMBH, FAG KUGELFISCHER GEORG SCHAFER AG, AND FAG BEARINGS CORP., PLAINTIFFS AND DEFENDANT-INTERVENORS, AND INA WALZLAGER SCHAEFFLER OHG AND INA BEARING CO., INC., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND TORRINGTON CO., DEFENDANT-INTERVENOR AND PLAINTIFF

Consolidated Court No. 97-10-01800

(Dated November 27, 2001)

JUDGMENT

TSOUICALAS, *Senior Judge*: This Court having received and reviewed the United States Department of Commerce, International Trade Administration's ("Commerce") *Final Results of Redetermination Pursuant to Court Remand* ("Remand Results"), *NTN Bearing Corp. of Am. v. United States*, Slip Op. 01-76 (CIT June 22, 2001) and Commerce having complied with the Court's remand, and no responses to the Remand Results having been submitted by the parties, it is hereby

ORDERED that the Remand Results filed by Commerce on October 4, 2001, are affirmed in their entirety; and it is further

ORDERED that since all other issues were previously decided, this case is dismissed.

(Slip Op. 01-137)

FORMER EMPLOYEES OF MOTOROLA CERAMIC PRODUCTS, PLAINTIFFS *v.*
UNITED STATES OF AMERICA, DEFENDANT

Consolidated Court No. 99-07-00393

[Plaintiffs' application for fees and other expenses pursuant to the Equal Access to Justice Act is denied.]

(Dated November 28, 2001)

Dorsey & Whitney (unford Page Hall, II, Linda B. Popejoy), Washington, D.C., for Plaintiffs.

Robert D. cCallum, Jr., Assistant Attorney General; *David . Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice; *elta A. elnbrensis*, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice; *Louisa . Reynolds*, Attorney, United States Department of Labor, of Counsel, Washington, D.C., for Defendant.

OPINION

CARMAN, *Chief Judge*: Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 (2001), and Rule 68 of this Court, Plaintiffs have applied

for fees and other expenses related to *Former Employees of otorola Ceramic Products v. United States*, Consolidated Court Number 99-07-00393. This Court denies Plaintiffs' application for fees and other expenses because Plaintiffs do not qualify as a prevailing party under the Equal Access to Justice Act (EAJA).

BACKGROUND

Plaintiffs sought worker adjustment assistance under the Trade Act of 1974, as amended, but the United States Department of Labor (DOL) twice denied Plaintiffs certification for eligibility. See *Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance*, TA-W-35,438, *otorola Ceramic Products, Albuquerque, New Mexico*, 64 Fed. Reg. 16,752 (April 6, 1999); *Notice of Negative Determination on Reconsideration*, TA-W-35,438, *Motorola Ceramic Products, Albuquerque, New Mexico*, 64 Fed. Reg. 32,275 (June 16, 1999). Through court-appointed counsel, Plaintiffs challenged the denial of eligibility certification in this Court, moving for judgment upon the agency record. With Plaintiffs' consent, the DOL requested a remand to reconsider its negative determinations. This Court granted the DOL's request. After reconsideration, the DOL reversed its negative determination and certified the employees as eligible for adjustment assistance due to their loss of employment from increased imports. See *Notice of Revised Determination on Remand*, 66 Fed. Reg. 15,139 (March 15, 2001). The parties then filed a stipulation of dismissal, and the Court entered an order of dismissal of the consolidated case on August 7, 2001.

On September 6, 2001, Plaintiffs filed an application for fees and other expenses pursuant to the EAJA and Rule 68 of this Court. Defendant filed a memorandum in opposition to Plaintiffs' application on October 5, 2001, asserting Plaintiffs did not meet the prevailing party requirement of the EAJA. Plaintiffs sought leave and were permitted by the Court to file a reply memorandum which they filed on November 2, 2001.

DISCUSSION

Congress enacted the EAJA to encourage individuals who might otherwise be deterred by the expense of legal representation to seek review of unreasonable governmental actions. See *Equal Access to Justice Act*, Pub. L. No. 96-481, Title II, § 201, 94 Stat. 2325 (1980). A party is eligible for fees and expenses under the EAJA if: (1) the applicant prevails in the action; (2) the government's position is not substantially justified; (3) an award of attorney fees would not be unjust; and (4) a timely-filed fee application is supported by an itemized statement. See *Doty v. United States*, 71 F.3d 384, 385 (Fed. Cir. 1995).

This Court must first determine whether Plaintiffs are a "prevailing party" under the statute. If Plaintiffs cannot establish they are the pre-

vailing party, this Court cannot award them legal fees under the EAJA. The EAJA states in relevant part:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, * * * incurred by that party in any civil action * * *, including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A) (emphasis added).

The Supreme Court recently defined "prevailing party" in *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 121 S.Ct. 1835 (2001). In *Buckhannon*, an assisted living provider had sought from the District Court declaratory and injunctive relief that the State of West Virginia's requirement that all residents be capable of "self-preservation" violated the Fair Housing Amendments Act of 1988 (FHAA), 42 U.S.C. § 3601 *et seq.*, and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.* Pending resolution of the case, the West Virginia Legislature eliminated the "self-preservation" requirement. The District Court therefore granted Defendants' motion to dismiss the case as moot. It also denied Plaintiffs' motion for attorney fees under the FHAA, 42 U.S.C. § 3613(c)(2), and the ADA, 42 U.S.C. § 12205, both of which require the claimant to be a prevailing party. Plaintiffs asserted they were the prevailing party under the "catalyst theory." Under that theory, a plaintiff whose litigation produces the desired result by prompting a voluntary change in the defendant's conduct is a prevailing party. The Fourth Circuit had previously rejected the catalyst theory,¹ and it affirmed the District Court's denial of Plaintiffs' motion. *See Buckhannon*, 121 S.Ct. at 1838-1839.

The United States Supreme Court, in a 5-4 decision, affirmed the Fourth Circuit, holding that a prevailing party must have been awarded some relief by the courts and rejecting the catalyst theory embraced by most other courts of appeals.² To satisfy the prevailing party requirements, the Supreme Court interpreted its past decisions to require a judicially sanctioned change in the parties' legal relationship, whether through an enforceable judgment on the merits or through a court-ordered consent decree. *Buckhannon*, 121 S.Ct. at 1840, 1841.

Although *Buckhannon* does not discuss the EAJA, the Supreme Court based its interpretation of "prevailing party" upon statutes other than those at issue in *Buckhannon*. It referred to "[n]umerous federal stat-

¹ See *S-1 and S-2 v. State Bd. of Ed. of N.C.*, 21 F.3d 49, 51 (4th Cir. 1994) (en banc) (per curiam).

² All of the following embraced with approval the catalyst theory: *Stanton v. S. Berkshire Reg'l Sch. Dist.*, 197 F.3d 574, 577 n.2 (1st Cir. 1999); *Arbley v. Bane*, 57 F.3d 224, 234 (2d Cir. 1995); *Baumgartner v. Harrisburg Hous. Auth.*, 21 F.3d 541, 546-550 (3rd Cir. 1994); *Payne v. Bd. of Ed.*, 88 F.3d 392, 397 (6th Cir. 1996); *Zinn v. Shalala*, 35 F.3d 273, 276 (7th Cir. 1994); *Little Rock Sch. Dist. v. Pulaski Cty. Special Sch. Dist.*, #1, 17 F.3d 260, 263, n.2 (8th Cir. 1994); *Kilgour v. City of Pasadena*, 53 F.3d 1007, 1010 (9th Cir. 1995); *Beard v. Teska*, 31 F.3d 942, 951-952 (10th Cir. 1994); *orris v. City of West Palm Beach*, 194 F.3d 1203, 1207 (11th Cir. 1999).

utes [that] allow courts to award attorney's fees and costs to the 'prevailing party,'" (*Id.* at 1838) and noted that it has consistently interpreted the nearly identical fee-shifting provisions of other statutes, such as the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(k), the Voting Rights Act Amendments of 1975, 42 U.S.C. § 19731(e), and the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988. *Id.* at 1839. The Supreme Court, therefore, did not appear to limit its interpretation of "prevailing party" to the FHAA, ADA, and those statutes listed as examples of similar language.

In keeping with Supreme Court precedent, this Court interprets the EAJA to permit an award of fees only to a prevailing party. The stipulation of dismissal is insufficient under *Buckhannon* to render the Plaintiffs a prevailing party because Plaintiffs have not been awarded relief through an enforceable judgment on the merits or through a court-ordered consent decree.³

This Court regards highly the able representation of Plaintiffs' counsel. Plaintiffs' motion for judgment on the agency record may well have been the catalyst for the DOL's determination that Plaintiffs were eligible to apply for adjustment assistance. However, this Court's remand order did not constitute a judicially sanctioned change in the parties' legal relationship, for it was uncertain at the time what the DOL would ultimately determine. *See Former Employees of Shaw Pipe, Inc. v. United States Secretary of Labor*, 9 F.Supp.2d 713, 715 (Ct. Int'l Trade 1998).⁴ Despite the positive results secured by Plaintiffs' counsel's efforts, the Court cannot here award attorney fees under the EAJA.

CONCLUSION

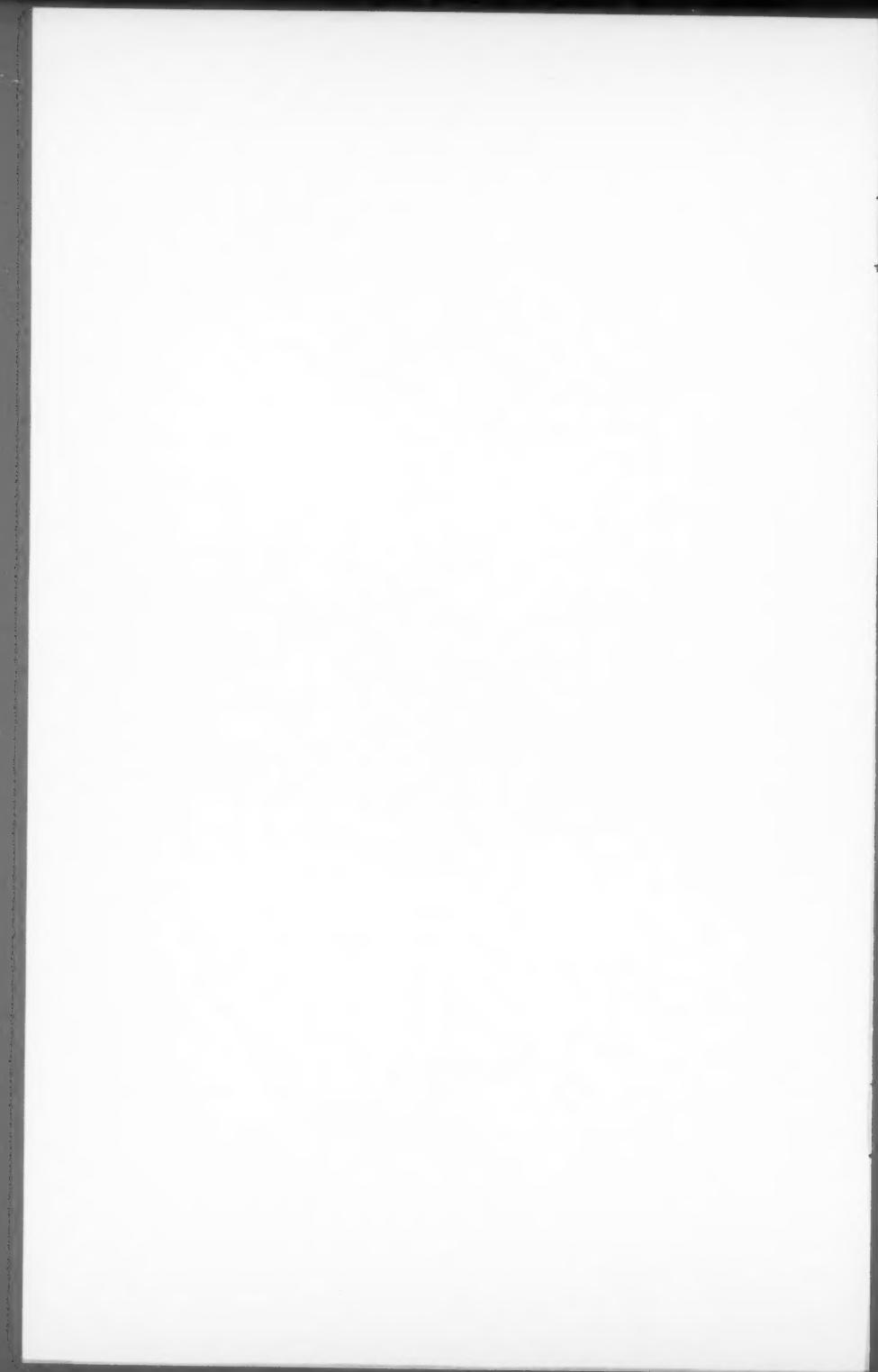
Based on the reasoning above, this Court denies Plaintiffs' application for attorney fees and other costs under the Equal Access to Justice Act, 28 U.S.C. § 2412.

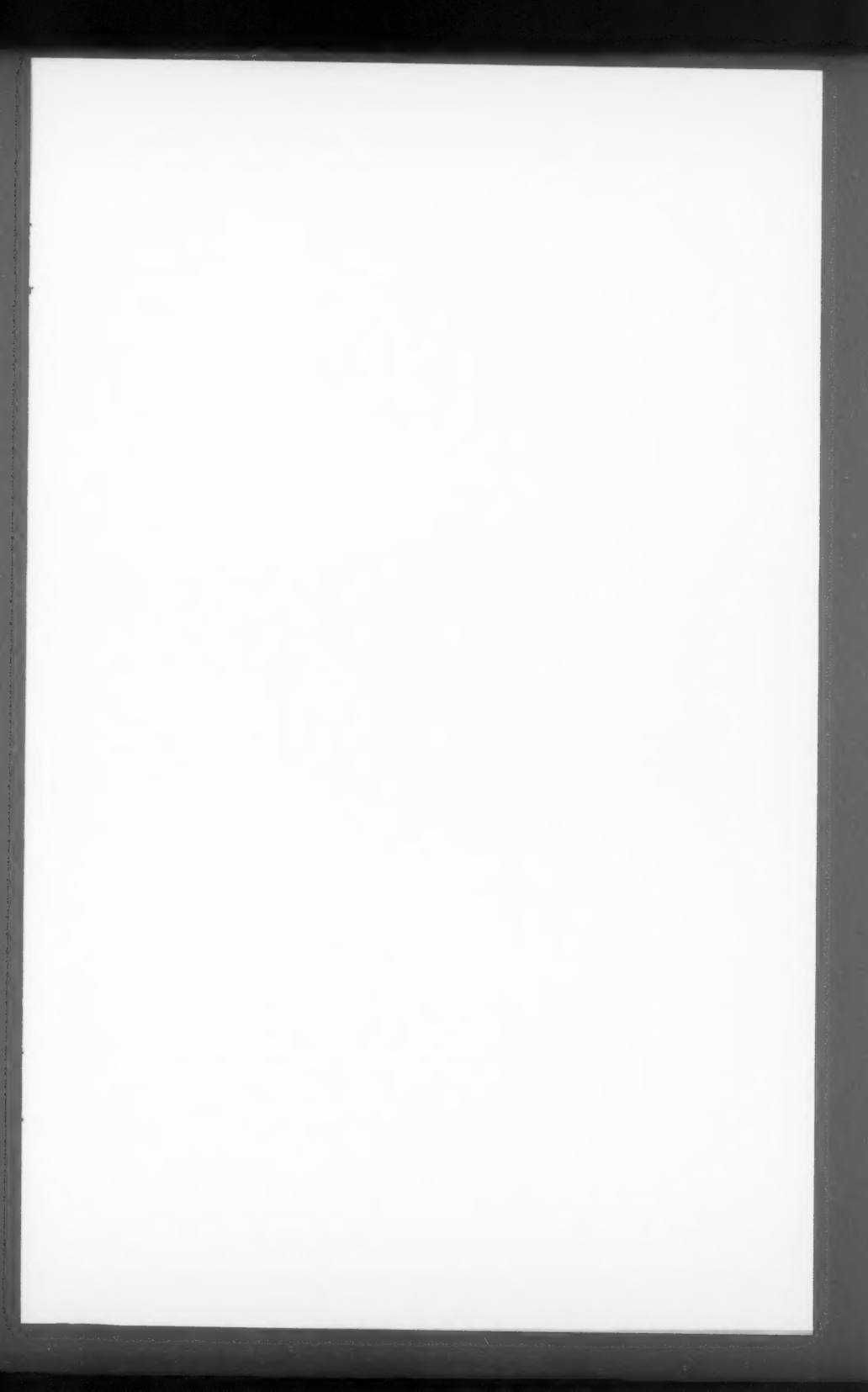
³ Plaintiffs rely heavily upon *Brickwood Contractors, Inc. v. United States*, 49 Fed.Cl. 738, 746-747 (Fed. Cl. 2001), in which the United States Court of Federal Claims argued that *Buckhannon* should not apply to the EAJA because, unlike the statutes listed by the United States Supreme Court in that decision, the EAJA requires a decision on the merits of the underlying lawsuit as to whether the government's position was substantially justified. The Court of Claims acknowledged, however, that a decision on the merits is not required to determine "prevailing party" status. *See Brickwood*, 49 Fed.Cl. at 747. Because the EAJA shares the same "prevailing party" requirement as the statutes listed in *Buckhannon*, this Court is guided by the Supreme Court's interpretation of that term. "Although the United States Supreme Court did not mention attorney fees under the EAJA in *Buckhannon*, it strongly insisted a court respect ordinary language in its interpretation of the term 'prevailing party.'" *Alcoec v. Immigration and Naturalization Service*, 2001 WL 1142807, *3 (N.D. Tex.).

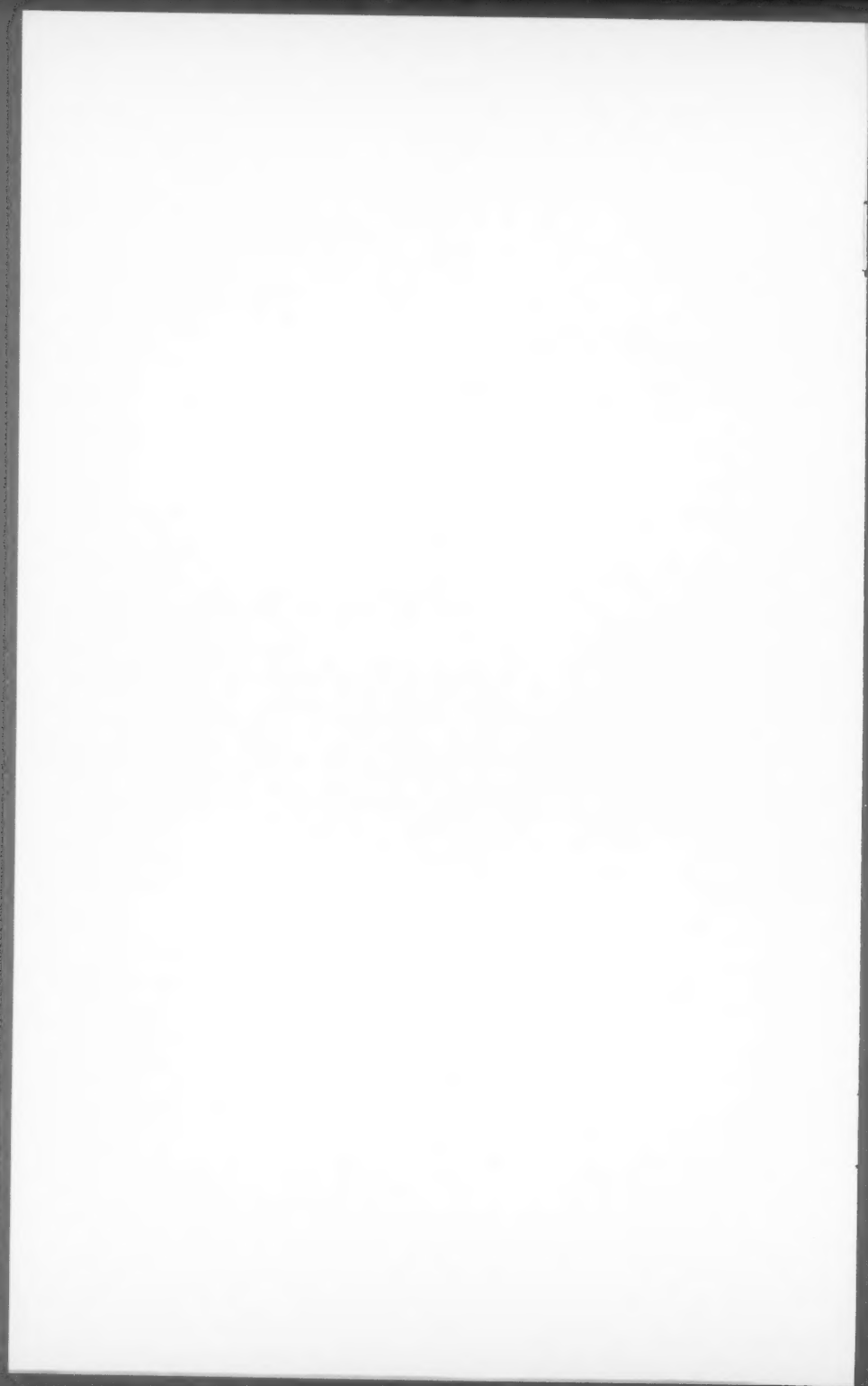
⁴ Plaintiffs' reliance upon *Hudson v. Principi*, 260 F.3d 1357 (Fed. Cir. 2001) is misplaced. There the Court of Appeals for the Federal Circuit did not examine whether a remand by the Court of Appeals for Veterans Claims (CAVC) rendered the plaintiff a prevailing party but simply acknowledged the parties' agreement that this was so. *Hudson* revolved around the failure of the Court of Appeals for Veterans Claims even to consider the plaintiff's EAJA application due to a mistaken finding of lack of jurisdiction. *See Hudson*, 260 F.3d at 1362, 1364.

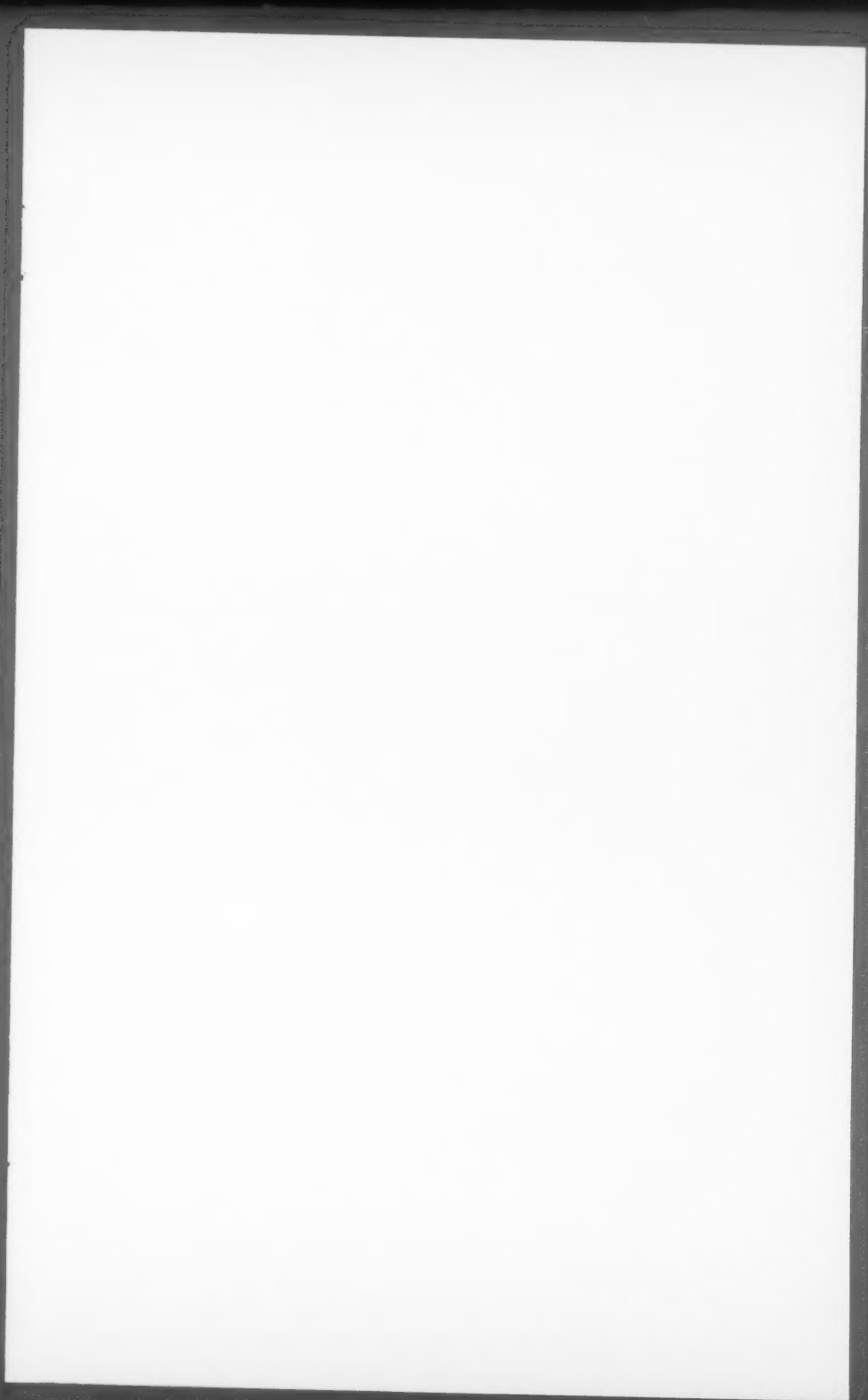
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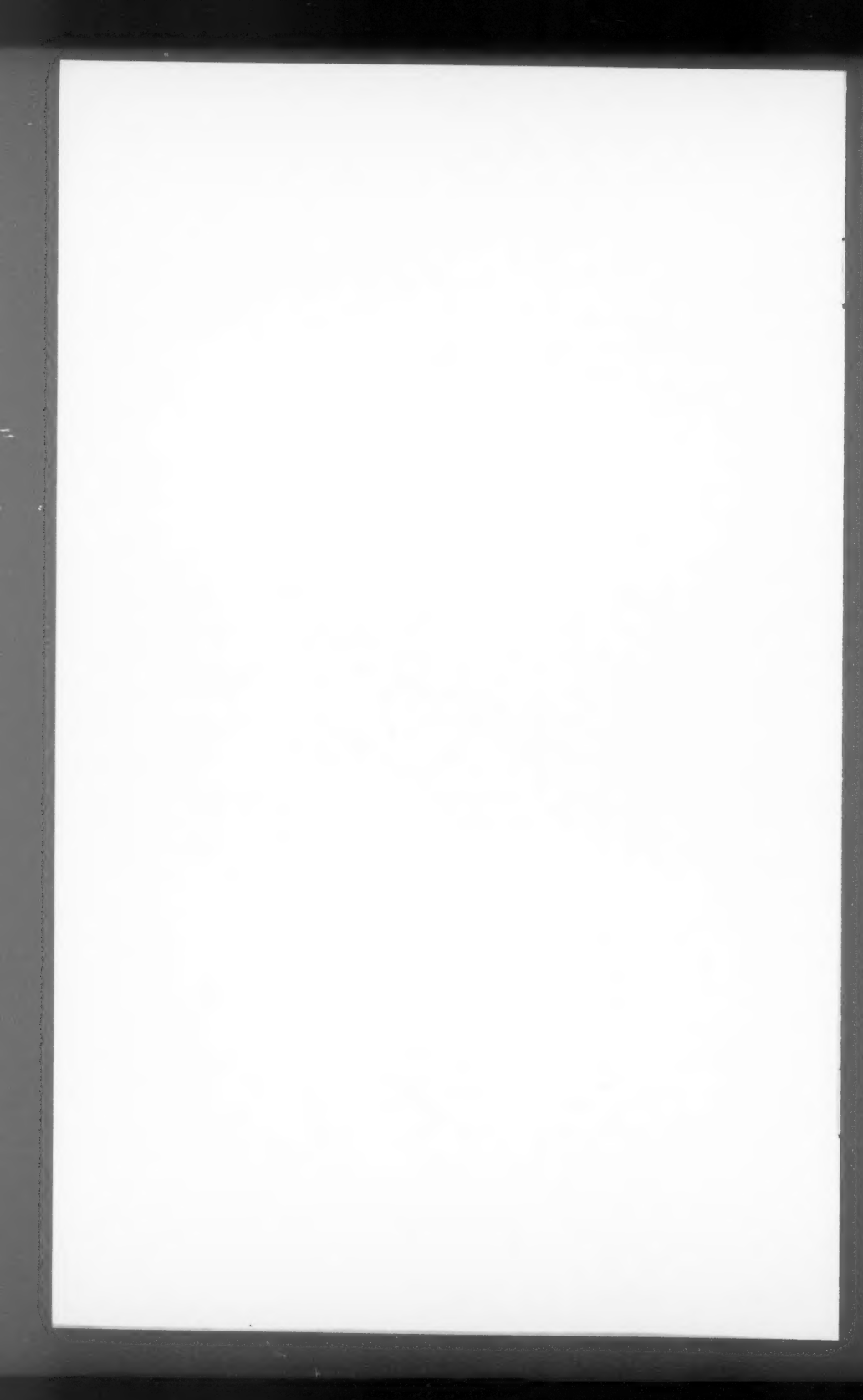
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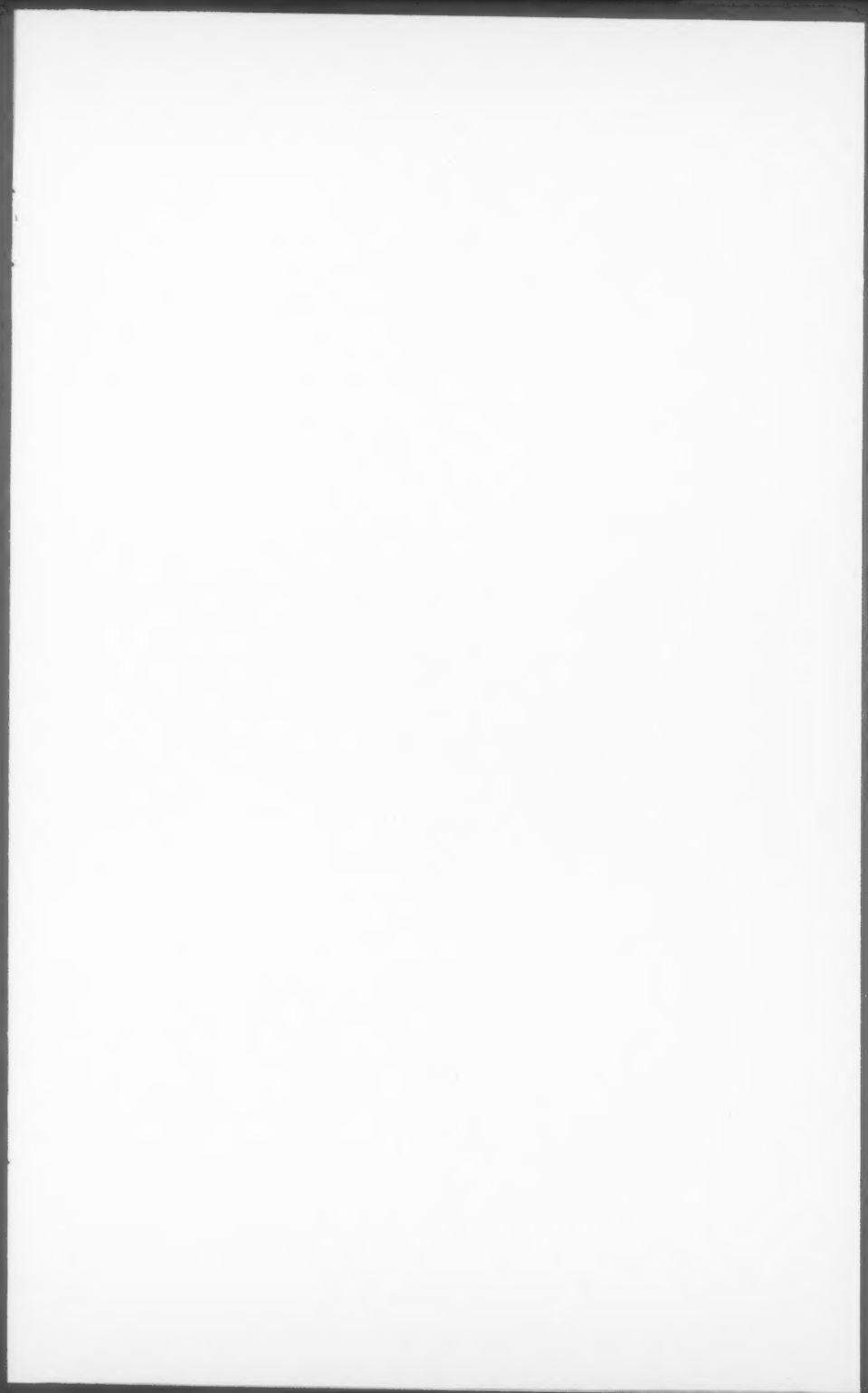












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